

Model Toxics Control Act

**MTCA Cleanup Regulation
Chapter 173-340 WAC**

**Model Toxics Control Act
Chapter 70A.305 RCW**

**Uniform Environmental Covenants Act
Chapter 64.70 RCW**



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- [Revised Code of Washington 70.105D](#)
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Disclaimer

This document does not reflect the official version of the Model Toxics Control Act (Chapter 70A.305 RCW) or the MTCA Cleanup Regulation (Chapter 173-340 WAC). This document was produced from the official version of the state and regulation maintained by the Office of the Code Revisor in a computer database. If there are any conflicts between the language contained in the official version of the statute and regulation maintained by the Office of the Code Revisor, the language contained in the official version shall govern.

¹ www.ecology.wa.gov/contact

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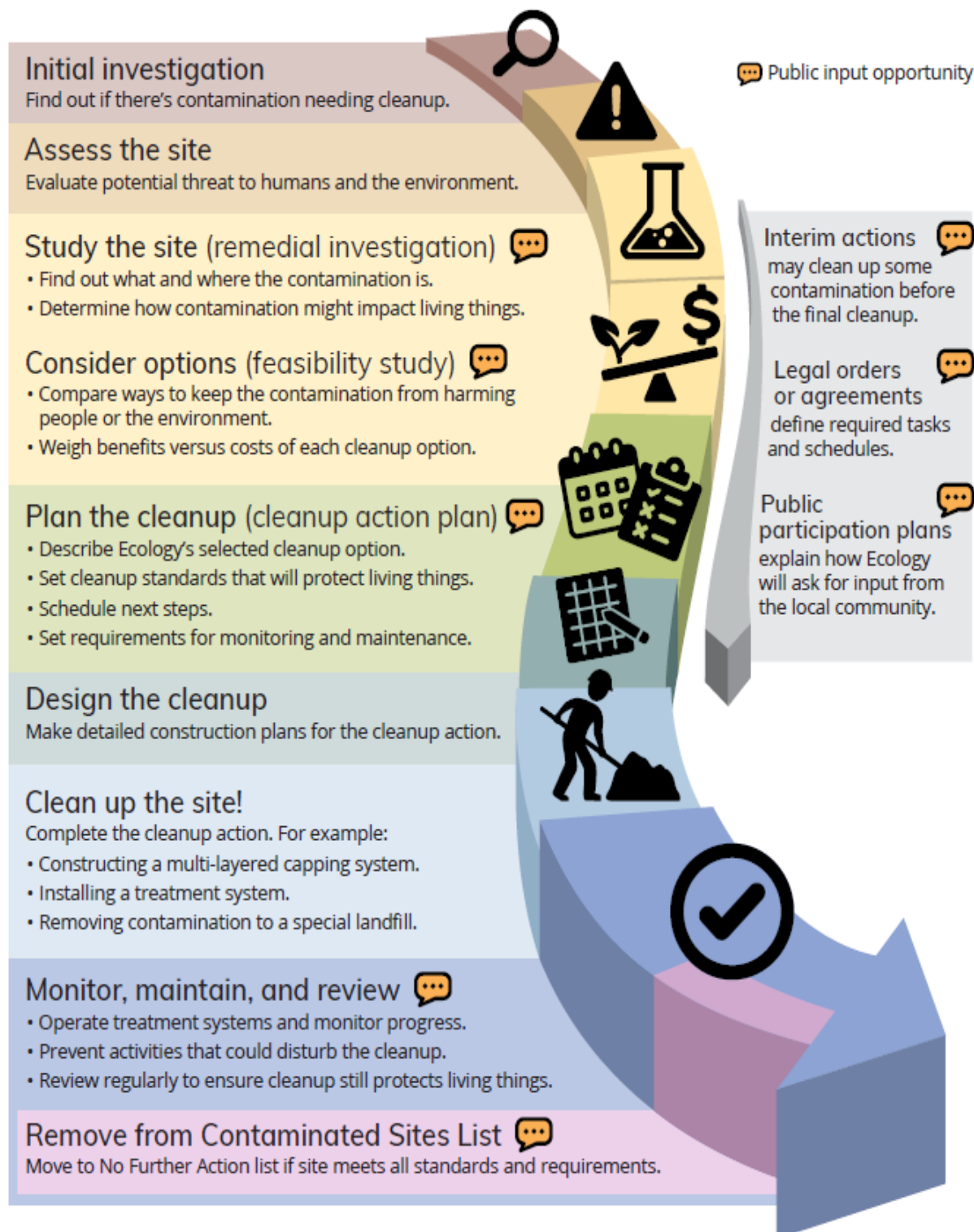
Chapter 70A.305 RCW

Uniform Environmental Covenants Act

Chapter 64.70 RCW

Washington's Cleanup Process

Public participation plans and comment periods are only required for cleanups under a legal agreement with Ecology. Otherwise, all cleanups follow the same steps. The steps are defined by Washington's cleanup law, the Model Toxics Control Act.



**Model Toxics Control Act
Cleanup Regulation
Chapter 173-340 WAC**

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Rule Adoption

On August 23, 2023, the Department of Ecology (Ecology) adopted amendments to Chapter 173-340 WAC, the Model Toxics Control Act Cleanup Regulations. The regulations govern the investigation and cleanup of sites in Washington state contaminated by the release of hazardous substances. The rule amendments are authorized by and implement Chapter 70A.305 RCW, the Model Toxics Control Act (MTCA), and Chapter 70A.355 RCW, the Underground Storage Tank law.

What is the effective date of the amendments?

The rule amendments become effective on January 1, 2024.

What is the purpose of the amendments?

The purpose of the rule amendments is to:

- Strengthen environmental justice principles when prioritizing and cleaning up contaminated sites.
- Improve the site hazard assessment and ranking process.
- Require comprehensive program plans and performance assessments.
- Improve initial response to releases from regulated underground storage tanks.
- Update and clarify remedial investigation and remedy selection requirements.
- Clarify which requirements apply to independent remedial actions.
- Strengthen public participation and tribal engagement requirements for Ecology-conducted or supervised cleanups.
- Make the rule easier to use and understand.

The rule amendments do not change cleanup standards. Where can I find the amendments and supporting documents?

You can find the adopted rule amendments and supporting documents on Ecology's website: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-340>.

Available documents include:

- [Adoption notice – CR103 form](#)
- [Adopted rule language](#)
- [Final Regulatory Analyses](#)
- [Concise Explanatory Statement](#)
- [Implementation Plan](#)
- [SEPA Determination of Nonsignificance and Environmental Checklist](#)

Where can I find more information about the rulemaking?

For more information about the rulemaking, visit our website: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-340>.

Part 1 – Overall Cleanup Process

WAC 173-340-100 Purpose.

This chapter is promulgated under chapter [70A.305](#) RCW, the Model Toxics Control Act. It establishes administrative processes and standards to identify, investigate, and cleanup sites where hazardous substances have come to be located. It defines the role of ecology and encourages public and tribal involvement in decision making at these sites.

The goal of this chapter is to implement chapter [70A.305](#) RCW, the Model Toxics Control Act. This chapter provides a workable process to accomplish effective and expeditious cleanups in a manner that protects human health and the environment, including vulnerable populations and overburdened communities. This chapter is primarily intended to address releases of hazardous substances caused by past activities although its provisions may be applied to potential and ongoing releases of hazardous substances from current activities.

Note: All materials incorporated by reference in this chapter are available for inspection at the Department of Ecology's Toxics Cleanup Program, 300 Desmond Drive, Lacey, Washington, 98503.

WAC 173-340-110 Applicability.

- (1)** This chapter applies to all sites where there has been a release or threatened release of a hazardous substance that may pose a threat to human health or the environment. Under this chapter, ecology may require or take those actions necessary to investigate and clean up these releases.
- (2)** Ecology retains all its authority to address a release or threatened release under other applicable laws or regulations. The cleanup process and procedures under this chapter and under other laws may be combined. Ecology may initiate a remedial action under this chapter and may upon further analysis determine that another law is more appropriate, or vice versa.
- (3)** If a hazardous substance remains at a site after actions have been completed under other applicable laws or regulations, ecology may apply this chapter to protect human health or the environment.

WAC 173-340-120 Overview.

This section provides an overview of the cleanup process that typically occurs at a site following the discovery of a release or threatened release of a hazardous substance to the environment. See WAC [173-340-510](#) for an overview of the administrative options for investigating and cleaning up a site. If there are any inconsistencies between this section and any specifically referenced sections, the referenced section governs.

- (1) Release reporting.** Within 90 days of discovering a hazardous substance release or threatened release that may pose a threat to human health or the environment, an owner or operator must report the release to ecology as described in WAC [173-340-300](#). Other persons are encouraged to report such releases. Some releases are exempt from the release reporting requirements of this chapter, including those previously reported to ecology under the state's hazardous waste, underground storage tank, or water quality laws. The term "hazardous substance" includes a broad range of substances as defined in WAC [173-340-200](#).
- (2) Initial investigation.** Within 90 days of learning of a hazardous substance release, ecology conducts an initial investigation under WAC [173-340-310](#) to confirm whether a release occurred that poses a threat and to determine whether further remedial action is necessary to confirm or address that threat. Ecology may extend an initial investigation when independent remedial actions are completed within 90 days of release discovery. Ecology notifies owners and operators in writing of its determination. For sites where remedial action is necessary, ecology also notifies the public in the *Contaminated Site Register* and provides information about the site on ecology's website under WAC [173-340-600](#).
- (3) Site hazard assessment and ranking.** Based on the results of the initial investigation, ecology assesses and ranks the threats to human health and the environment posed by the site under WAC [173-340-320](#). Ecology may update the site's hazard assessment and rankings during the cleanup process when new information becomes available or conditions change. Ecology uses the results to support decisions to add or remove sites from the contaminated sites list, prioritize remedial action and funding among and within sites, track cleanup progress, and communicate threats to the public.
- (4) Listing.** Ecology lists a site based on the results of the initial investigation and the site hazard assessment and ranking.

 - (a) Contaminated sites list.** If further remedial action is necessary, ecology adds the site to the contaminated sites list under WAC [173-340-330](#). The list also identifies the site's remedial action status. Ecology updates the status during the cleanup process to reflect current conditions. The list is publicly available on ecology's website.
 - (b) No further action sites list.** If no further remedial action is necessary, ecology adds the site to the no further action sites list under WAC [173-340-335](#). The list identifies whether institutional controls or periodic reviews remain necessary at the site. The list is publicly available on ecology's website.

- (5) **Interim actions.** Under certain conditions it may be necessary or appropriate to conduct an early, interim action at a site before conducting a cleanup action.
- (a) WAC [173-340-430](#) describes when interim actions are typically appropriate at a site and the requirements for such actions.
 - (b) WAC [173-340-450](#) describes specific interim actions that UST system owners and operators must perform immediately or shortly after confirming a release from a regulated UST system to reduce the threats posed by the release, prevent any further release, and characterize the nature and extent of the release. As specified in chapter [173-360A](#) WAC, such releases must be cleaned up in accordance with this chapter.
- (6) **Remedial investigation of site conditions.** After a detailed work plan is prepared, a remedial investigation is conducted at the site under WAC [173-340-350](#) to identify the sources of contamination; to characterize the nature, extent, and magnitude of contamination; and to assess the threats posed by the contamination to human health and the environment. The results of the remedial investigation are used to establish cleanup standards and to develop and evaluate cleanup action alternatives in a feasibility study.
- (7) **Feasibility study of cleanup action alternatives.** Based on the results of the remedial investigation, cleanup action alternatives for addressing the threats posed by the site are developed and evaluated in a feasibility study under WAC [173-340-351](#). The alternatives are evaluated against the requirements and expectations for cleanup actions in WAC [173-340-360](#) and [173-340-370](#). The results of the feasibility study are used to select the cleanup action for a site. A feasibility study is not required to select an applicable model remedy developed by ecology under WAC [173-340-390](#).
- (8) **Cleanup action plan.** Based on the results of the remedial investigation/feasibility study, a cleanup action is selected and a cleanup action plan is prepared under WAC [173-340-380](#). The cleanup action plan documents the selected cleanup action and specifies the cleanup standards and other requirements the cleanup action must meet. Cleanup standards are established under Part 7 of this chapter and include the concentrations the cleanup action must meet (cleanup levels), the location where those concentrations must be met (points of compliance), and other regulatory requirements that apply to the cleanup action or site.
- (9) **Cleanup.** After a cleanup action is selected, the cleanup is conducted under WAC [173-340-400](#) and [173-340-410](#). Cleanup includes design, construction, operation and maintenance, and monitoring of the cleanup action.
- (a) **Design.** Before starting construction, plans are developed to detail the cleanup action. This includes engineering designs, construction plans and specifications, operation and maintenance plans, and compliance monitoring plans. Before or during this design phase, any permits or approvals needed to construct the cleanup action are identified and resolved.

- (b) **Construction.** Construction of the cleanup action is conducted in accordance with the plans and specifications prepared during the design phase. Upon completion of construction, as-built reports are prepared to document all aspects of construction and compliance with plans and specifications. During and upon completion of construction, ecology may inspect the site and provide construction oversight.
- (c) **Operation and maintenance.** After construction is complete, some cleanup actions need to be operated and maintained for a period of time to achieve cleanup standards. For example, a treatment system may be constructed and used to clean up contaminated groundwater. Operation and maintenance of such cleanup actions is conducted in accordance with a plan developed during the design phase.
- (d) **Monitoring.** During the construction and the operation and maintenance of the cleanup action, the following types of compliance monitoring are conducted. Compliance monitoring is conducted in accordance with a plan developed during the design phase.

 - (i) Protection monitoring is conducted to confirm that human health and the environment are adequately protected.
 - (ii) Performance monitoring is conducted to confirm that the cleanup action is achieving or has attained cleanup standards and any other applicable performance standards, such as remediation levels or permit requirements.
- (10) **Cleanup completion.** Ecology determines whether cleanup of the site is complete based on the criteria in WAC [173-340-330](#)(5). Typically, a cleanup is complete if no further remedial action is necessary to achieve cleanup standards at the site. For nonpermanent cleanup actions, such as those involving containment of contamination, post-cleanup controls and monitoring may be necessary as part of the cleanup action to maintain and periodically review compliance with cleanup standards.
- (11) **Removal from contaminated sites list.** After determining the cleanup of the site is complete, ecology removes the site from the contaminated sites list under WAC [173-340-330](#) and adds the site to the no further action sites list under WAC [173-340-335](#). The no further action sites list identifies whether institutional controls or periodic reviews remain necessary at the site.
- (12) **Post-cleanup controls and monitoring.** For nonpermanent cleanup actions, after the cleanup is completed and the site is delisted, one or more of the following post-cleanup remedial actions may be needed to control or monitor contamination remaining at the site.

 - (a) **Engineered controls.** Engineered controls are containment or treatment systems that prevent or limit movement of, or exposure to, contamination. For example, materials may be placed over contaminated soils to limit contact with contamination. For a cleanup action to remain protective, engineered controls must be operated and maintained in accordance with the plan required under WAC [173-340-400](#).
 - (b) **Institutional controls.** Institutional controls prohibit or limit activities or uses of real property that may interfere with the integrity of engineered controls or result in exposure to contamination remaining at the site. For example, a property may be

restricted to industrial land use at sites where cleanup standards are based on such use. Institutional controls may also obligate a person to operate, maintain, or monitor engineered controls to ensure the integrity of the cleanup action. Typically, institutional controls are implemented by recording a restrictive covenant on the property. For a cleanup action to remain protective, institutional controls must be maintained and enforced. See WAC [173-340-440](#).

- (c) **Confirmation monitoring.** Confirmation monitoring is a type of compliance monitoring used to confirm the long-term effectiveness of a cleanup action after the cleanup is completed. See WAC [173-340-410](#). For example, confirmation monitoring may be used to confirm that engineered controls are operating properly and effectively limiting the movement of contamination remaining at the site. For a cleanup action to remain protective, confirmation monitoring must be conducted in accordance with the plan required under WAC [173-340-400](#). Ecology relies on the monitoring data during periodic reviews of post-cleanup site conditions.
 - (d) **Financial assurances.** Financial assurances are assurances made to ecology by a person that sufficient financial resources are available to provide for the long-term operation, maintenance, and monitoring of a cleanup action relying on engineered or institutional controls, and for any needed corrective measures. Ecology may require financial assurances under WAC [173-340-440](#)(11).
 - (e) **Periodic reviews.** Ecology conducts periodic reviews of post-cleanup site conditions at least once every five years to determine whether they remain protective of human health and the environment. If ecology determines that conditions are not protective and that substantial changes to the cleanup action are necessary, ecology may relist the site on the contaminated sites list and revise the cleanup action plan. See WAC [173-340-420](#).
- (13) **Public notice and participation and tribal engagement.**
- (a) **Site-specific information and alerts.** For all sites on the contaminated sites list and the no further action sites list, ecology will:
 - (i) Make key site information publicly available on ecology's website under WAC [173-340-600](#)(5), including the site's listing, remedial action status, hazard rankings, and remedial action plans and reports;
 - (ii) If requested, notify a person electronically under WAC [173-340-600](#)(6) when the site information specified on ecology's website is added or changed; and
 - (iii) Provide notice of proposed actions available for public comment in the *Contaminated Site Register*.
 - (b) **Ecology-conducted and ecology-supervised remedial actions.** For ecology-conducted and ecology-supervised remedial actions, ecology provides the public with notice and opportunity to comment and invites tribal engagement on most steps in the cleanup

process. For such sites, ecology prepares or requires site-specific public participation and tribal engagement plans. These and other requirements are described in WAC [173-340-600](#)(8) through (19) and [173-340-620](#).

- (c) **Independent remedial actions.** For independent remedial actions, ecology provides the public with notice of any reports of such actions received by ecology, the results of any ecology review of such actions, the results of any periodic review of the site, and any institutional controls at the site. These and other requirements are described in WAC [173-340-600](#)(20).

WAC 173-340-130 Administrative principles.

Ecology will conduct or require remedial actions, or provide technical assistance for independent remedial actions, consistent with the provisions of this section.

- (1) **Sharing information.** Ecology's policy is to make information about releases or threatened releases available to owners, operators, or other persons with potential liability for a site in order to encourage them to conduct prompt remedial action. Ecology's policy is also to make the same information available to interested members of the general public so they can follow the progress of site cleanup in the state.
- (2) **Providing technical assistance.** All persons are encouraged to contact ecology and seek assistance on the general administrative and technical requirements of the state cleanup law. Under ecology's voluntary cleanup program, persons planning or conducting independent remedial action may also request technical assistance on how to investigate and clean up a site and written opinions on whether a planned or completed remedial action meets the substantive requirements of the state cleanup law. Such technical assistance is advisory only and is not binding on ecology. Such technical assistance does not constitute, and may not be represented by a person as, an approval of a remedial action. See RCW [70A.305.170\(1\)](#) and WAC [173-340-515\(5\)](#). Ecology will only provide a binding commitment or approval under an order or decree.
- (3) **Collecting adequate information.** Ecology intends that adequate information be gathered at a site to enable decisions on appropriate actions. Ecology also intends that decisions be made and cleanups proceed expeditiously once adequate information is obtained. Studies can be performed and submittals made at varying levels of detail appropriate to the conditions at the site. Also, steps in the cleanup process may be combined to facilitate quicker cleanups, where appropriate. Flexibility in the scope of investigations and in combining steps may be particularly appropriate for routine cleanup actions. Once adequate information has been obtained, ecology will make decisions within the framework provided under the state cleanup law and in site-specific orders or decrees.
- (4) **Preparing documents.** Except for the initial investigation and the site hazard assessment and ranking, any of the studies, reports, or plans used in the cleanup process can be prepared by either ecology or the potentially liable person. Ecology retains all authority to review and verify the documents submitted and to make decisions based on the documents and other relevant information.
- (5) **Encouraging and facilitating public participation.** For ecology-conducted and ecology-supervised remedial actions, ecology seeks to encourage public participation and facilitate equitable participation in all steps of the cleanup process under WAC [173-340-600](#). Ecology will encourage a level of participation appropriate to the threats posed by a site and the level of the public's interest in the site. When assessing public participation needs at a site, ecology will consider the interests of likely vulnerable populations and overburdened communities.

- (6) **Engaging and collaborating with Indian tribes.** For ecology-conducted and ecology-supervised remedial actions, ecology will seek to engage affected Indian tribes under WAC [173-340-620](#) by providing timely information, effective communication, continuous opportunities for collaboration and, when necessary, government-to-government consultation, as appropriate for each site.
- (7) **Coordinating with agencies.**
- (a) For ecology-conducted and ecology-supervised remedial actions, ecology will ensure appropriate local, state, and federal agencies are kept informed and, as appropriate, involved in the development and implementation of remedial actions. Ecology may require a potentially liable person to undertake this responsibility. If the potentially liable person demonstrates that they are unable to obtain adequate involvement by a particular government agency to allow the remedial action to proceed, ecology will request the involvement of the agency.
 - (b) The nature and degree of coordination and consultation must be commensurate with the other agencies' interests and needs at the site. Interested agencies must be included in the lists for public notices under WAC [173-340-600](#). To facilitate coordination, it is important that agencies provide specific comments, including the identification of other applicable state and federal laws and any additional information or mitigating measures that are necessary or desirable to satisfy their concerns.
 - (c) In order to provide for expeditious cleanup actions, all federal, state, and local agencies, are encouraged to coordinate with ecology when providing notices, holding meetings and hearings, and preparing documents. Whenever reasonable, ecology will coordinate and combine its activities with other agencies to minimize the duplication of notices, hearings and preparation of documents, unless otherwise prohibited.
- (8) **Integrating State Environmental Policy Act.** See chapter [197-11](#) WAC for the State Environmental Policy Act requirements pertaining to the implementation of the state cleanup law.
- (9) **Ecology decisions.** Ecology retains all authority to determine compliance with state cleanup law requirements, including:
- (a) Whether a remedial action is necessary under state cleanup law;
 - (b) Whether a remedial action meets the requirements in state cleanup law; and
 - (c) Whether a remedial action plan or report meets the requirements in state cleanup law.
- (10) **Appealing ecology decisions.** Unless otherwise indicated, all ecology decisions made under this chapter are remedial decisions and may be appealed only as provided for in RCW [70A.307.070](#).

Part 2 – Definitions and Usage

WAC 173-340-200 Definitions.

For the purpose of this chapter, the following definitions apply unless the context clearly requires otherwise:

“Acute toxicity” means the ability of a hazardous substance to cause injury or death to an organism as a result of a short-term exposure to a hazardous substance.

“Agreed order” means an order issued by ecology under WAC [173-340-530](#) with which the potentially liable person receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions, but it is not a settlement under RCW [70A.305.040](#)(4) and does not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW [70A.305.190](#)(4)(a)(v) and (vi).

“Aliphatic hydrocarbons” or “aliphatics” means organic compounds that are characterized by a straight, branched, or cyclic (nonbenzene ring) arrangement of carbon atoms and that do not contain halogens (such as chlorine). See also “aromatic hydrocarbons.”

“All practicable methods of treatment” means all technologies or methods currently available and demonstrated to work under similar site circumstances or through pilot studies, and applicable to the site at reasonable cost. These include “all known available and reasonable methods of treatment” (AKART) for discharges or potential discharges to waters of the state, and “best available control technologies” (BACT) for releases of hazardous substances into the air resulting from cleanup actions.

“Applicable state and federal laws” means all legally applicable requirements specified in WAC [173-340-710](#)(3) and those requirements that ecology determines, based on the criteria in WAC [173-340-710](#) (4), are relevant and appropriate requirements.

“Area background” means the concentration of a hazardous substance consistently present in the environment in the vicinity of a site as the result of human activities unrelated to releases from that site. Compare “natural background.”

“Aromatic hydrocarbons” or “aromatics” means organic compounds that are characterized by one or more benzene rings, with or without aliphatic hydrocarbon substitutions of hydrogen atoms on the rings, and that do not contain halogens (such as chlorine). See also “aliphatic hydrocarbons.”

“Averaging time” means the time over which the exposure is averaged. For noncarcinogens, the averaging time typically equals the exposure duration. For carcinogens, the averaging time equals the life expectancy of a person.

“Bioconcentration factor” means the ratio of the concentration of a hazardous substance in the tissue of an aquatic organism divided by the hazardous substance concentration in the ambient water in which the organism resides.

“Carcinogen” means any substance or agent that produces or tends to produce cancer in humans. For implementation of this chapter, the term carcinogen applies to substances on the United States Environmental Protection Agency lists of A (known human) and B (probable human)

carcinogens, and any substance that causes a significant increased incidence of benign or malignant tumors in a single, well conducted animal bioassay, consistent with the weight of evidence approach specified in the United States Environmental Protection Agency's Guidelines for Carcinogen Risk Assessment as set forth in 51 FR 33992 et seq.

“Carcinogenic potency factor” or “CPF” means the upper 95th percentile confidence limit of the slope of the dose-response curve and is expressed in units of (mg/kg-day)⁻¹. When derived from human epidemiological data, the carcinogenic potency factor may be a maximum likelihood estimate.

“Chronic reference dose” means an estimate (with an uncertainty spanning an order of magnitude or more) of a daily exposure level for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of adverse effects during a lifetime.

“Chronic toxicity” means the ability of a hazardous substance to cause injury or death to an organism resulting from repeated or constant exposure to the hazardous substance over an extended period of time.

“Cleanup” means the implementation of a cleanup action or interim action.

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

“Cleanup action alternative” means one or more treatment technology, containment action, removal action, engineered control, institutional control or other type of remedial action (“cleanup action components”) that, individually or, in combination, achieves a cleanup action at a site.

“Cleanup action plan” means the document prepared under WAC [173-340-380](#) that documents the selected cleanup action and specifies the cleanup standards and other requirements the cleanup action must meet.

“Cleanup level” means the concentration of a hazardous substance in soil, water, air, or sediment that is determined to be protective of human health and the environment under specified exposure conditions.

“Cleanup standards” means the standards adopted under RCW [70A.305.030](#)(2)(e). Establishing cleanup standards requires specification of the following:

- (a) Hazardous substance concentrations that protect human health and the environment (“cleanup levels”);
- (b) The location on the site where those cleanup levels must be attained (“points of compliance”); and
- (c) Additional regulatory requirements that apply to a cleanup action because of the type of action and/or the location of the site. These requirements are specified in applicable state and federal laws and are generally established in conjunction with the selection of a specific cleanup action.

“Cohen's method” means the maximum likelihood estimate of the mean and standard deviation accounting for data below the method detection limit or practical quantitation limit using the method described in the following publications:

- (a) Cohen, A.C., 1959. "Simplified estimators for the normal distribution when samples are singly censored or truncated." *Technometrics*. Volume 1, pages 217-237.
- (b) Cohen, A.C., 1961. "Tables for maximum likelihood estimates: Singly truncated and singly censored samples." *Technometrics*. Volume 3, pages 535-541.

“Compliance monitoring” means a remedial action that consists of the monitoring described in WAC [173-340-410](#), including protection monitoring, performance monitoring, and confirmation monitoring.

“Conceptual site model” means a conceptual understanding of a site that identifies known or suspected:

- (a) Hazardous substance sources and release mechanisms;
- (b) Hazardous substance types and concentrations;
- (c) Hazardous substance transport, including preferential pathways;
- (d) Contaminated environmental media, including the general extent and distribution of contamination within the media;
- (e) Current and potential human and ecological receptors and exposure pathways (complete and incomplete); and
- (f) Physical and habitat features, including current and potential future land and water uses and any sensitive environments.

This model is typically developed during the scoping of a remedial investigation and further refined as additional information is collected about the site during the remedial investigation. The model is a tool used to assist in making decisions at a site.

“Conducting land use planning under chapter [36.70A RCW](#)” as used in the definition of "industrial properties," means having adopted a comprehensive plan and development regulations for the site under chapter [36.70A RCW](#) (Growth Management Act).

“Confirmation monitoring” means a type of compliance monitoring described in WAC [173-340-410](#).

“Containment” means a container, vessel, barrier, or structure, whether natural or constructed, that confines a hazardous substance within a defined boundary and prevents or minimizes its release into the environment.

“Contaminant” means any hazardous substance that does not occur naturally or occurs at greater than natural background levels.

“Contaminated site” means a site for which ecology or PLIA has determined further remedial action is necessary under the state cleanup law to:

- (a) Confirm whether there is a threat to human health or the environment posed by a release or threatened release; or
- (b) Address the threat posed by a release or threatened release, based on the criteria in WAC [173-340-330](#)(5).

A contaminated site is referred to as hazardous waste site in chapter [70A.305](#) RCW.

“Contaminated sites list” means a list of contaminated sites maintained by ecology under WAC [173-340-330](#). For each listed site, the list also identifies the site’s current remedial action status. This list is referred to as the hazardous sites list in chapter [70A.305](#) RCW.

“Curie” means the measure of radioactivity defined as that quantity of radioactive material which decays at the rate of 3.70×10^{10} transformations per second. This decay rate is nearly equivalent to that exhibited by 1 gram of radium in equilibrium with its disintegration products.

“Day” means calendar day; however, any document due on the weekend or a holiday may be submitted on the first working day after the weekend or holiday.

“Decree” means a consent decree issued under WAC [173-340-520](#). “Consent decree” is synonymous with decree.

“Degradation by-products” or “decomposition by-products” means the secondary product of biological or chemical processes that break down chemicals into other chemicals. The decomposition by-products may be more or less toxic than the parent compound.

“Developmental reference dose” means an estimate (with an uncertainty of an order of magnitude or more) of an exposure level for the human population, including sensitive subgroups, that is likely to be without an appreciable risk of developmental effects.

“Direct contact” means exposure to hazardous substances through ingestion and/or dermal contact.

“Director” means the director of the department of ecology or the director's designee.

“Disposal” means the discharging, discarding, or abandoning of hazardous substances or the treatment, decontamination, or recycling of such substances once they have been discarded or abandoned. This includes the discharge, discard, or abandonment of any hazardous substances into or on any land, air, or water.

“Drinking water fraction” means the fraction of drinking water that is obtained or has the potential to be obtained from the site.

“Ecology” or “department” means the department of ecology.

“Ecology-conducted remedial action” means a remedial action conducted by ecology.

“Ecology-supervised remedial action” means a remedial action conducted by a potentially liable person or prospective purchaser and supervised by ecology under an order or decree.

“Engineered control” means a containment or treatment system that is designed and constructed to prevent or limit the movement of, or the exposure to, a hazardous substance. An engineered control is a type of remedial action. Examples of engineered controls include:

- (a) A layer of clean soil, asphalt or concrete paving, or other materials placed over contaminated soils to limit contact with contamination;
- (b) A groundwater flow barrier such as a bentonite slurry trench;
- (c) A groundwater gradient control system such as a French drain or a pump and treat system; and
- (d) A vapor control system.

“Environment” means any plant, animal, natural resource, surface water (including underlying sediments), groundwater, drinking water supply, land surface (including tidelands and shorelands) or subsurface strata, or ambient air within the state of Washington or under the jurisdiction of the state of Washington.

“Equivalent carbon number” or **“EC”** means a value assigned to a fraction of a petroleum mixture, empirically derived from the boiling point of the fraction normalized to the boiling point of n-alkanes or the retention time of n-alkanes in a boiling point gas chromatography column.

“Exposure” means subjection of an organism to the action, influence, or effect of a hazardous substance (chemical agent) or physical agent.

“Exposure duration” means the period of exposure to a hazardous substance.

“Exposure frequency” means the portion of the exposure duration that an individual is exposed to a hazardous substance, expressed as a fraction. For example, if a person is exposed 250 days (five days per week for 50 work weeks) over a year (365 days), the exposure frequency would be equal to: $(5 \times 50)/365 = 0.7$.

“Exposure parameters” means those parameters used to derive an estimate of the exposure to a hazardous substance.

“Exposure pathway” means the path a hazardous substance takes or could take from a source to an exposed organism. An exposure pathway describes the mechanism by which an individual or population is exposed or has the potential to be exposed to hazardous substances at or originating from a site. Each exposure pathway includes an actual or potential source or release from a source, an exposure point, and an exposure route. If the exposure point differs from the source of the hazardous substance, the exposure pathway also includes a transport/exposure medium.

“Facility” means (a) 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 (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

“Feasibility study” means a remedial action conducted under WAC [173-340-351](#) that consists of developing and evaluating cleanup action alternatives to enable selection of a cleanup action.

“Federal cleanup law” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.).

“Financial assurance” means a remedial action that consists of an assurance provided to ecology under WAC [173-340-440](#)(11) that sufficient financial resources are available to provide for the long-term effectiveness of engineered or institutional controls.

“Fish diet fraction” means the percentage of the total fish and/or shellfish in an individual's diet that is obtained or has the potential to be obtained from the site.

“Food crop” means any domestic plant that is produced for the purpose of, or may be used in whole or in part for, consumption by people or livestock. This includes nursery, root, or seedstock to be used for the production of food crops.

“Free product” means a nonaqueous phase liquid that is present in the soil, bedrock, groundwater or surface water as a distinct separate layer. Under the right conditions, if sufficient free product is present, free product is capable of migrating independent of the direction of flow of the groundwater or surface water.

“Gastrointestinal absorption fraction” means the fraction of a substance transported across the gastrointestinal lining and taken up systemically into the body.

“Groundwater” means water in a saturated zone or stratum beneath the surface of land or below a surface water.

“Hazard index” means the sum of two or more hazard quotients for multiple hazardous substances and/or multiple exposure pathways.

“Hazardous substance” means:

- (a) Any dangerous or extremely hazardous waste as defined in RCW [70A.300.010](#)(1) and (7), or any dangerous or extremely dangerous waste as designated by rule under chapter [70A.300](#) RCW;
- (b) Any hazardous substance as defined in RCW [70A.300.010](#)(10) or any hazardous substance as defined by rule under chapter [70A.300](#) RCW;
- (c) Any substance that, on the effective date of this section, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);
- (d) Petroleum or petroleum products; and
- (e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

“Hazard quotient” or “HQ” means the ratio of the dose of a single hazardous substance over a specified time period to a reference dose for that hazardous substance derived for a similar exposure period.

“Health and safety plan” means a plan prepared under WAC [173-340-810](#).

“Health effects assessment summary tables” or “HEAST” means a database developed by the United States Environmental Protection Agency that provides a summary of information on the toxicity of hazardous substances.

“Henry's law constant” means the ratio of a hazardous substance's concentration in the air to its concentration in water. Henry's law constant can vary significantly with temperature for some hazardous substances. The dimensionless form of this constant is used in the default equations in this chapter.

“Highest beneficial use” means the beneficial use of a resource generally requiring the highest quality in the resource. For example, for many hazardous substances, providing protection for the beneficial use of drinking water will generally also provide protection for a great variety of other existing and future beneficial uses of groundwater.

“Inadvertent discovery plan” means a plan prepared under WAC [173-340-815](#) that describes procedures for responding to a discovery of archaeological materials or human remains in accordance with applicable state and federal laws.

“Independent remedial action” means a remedial action conducted without ecology oversight or approval and not under an order or decree.

“Indian tribe” means the term as defined in RCW [43.376.010](#)(1).

“Indicator hazardous substances” means the subset of hazardous substances present at a site selected under WAC [173-340-708](#) for monitoring and analysis during any phase of remedial action for the purpose of characterizing the site or establishing cleanup requirements for that site.

“Indigenous peoples” means individual members of Indian tribes; other individual Native Americans; individual Native Alaskans, Native Hawaiians, and Native Pacific Islanders; and indigenous and tribal community-based organizations.

“Industrial properties” means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

- (a) Zoned for industrial use by a city or county conducting land use planning under chapter [36.70A](#) RCW (Growth Management Act); or

- (b) For counties not planning under chapter [36.70A](#) RCW (Growth Management Act) and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

See WAC [173-340-745](#) for additional criteria to determine if a land use not specifically listed in this definition would meet the requirement of "traditional industrial use" and for evaluating if a land use zoning category meets the requirement of being "zoned for industrial use."

"Inhalation absorption fraction" means the percent of a hazardous substance (expressed as a fraction) that is absorbed through the respiratory system.

"Inhalation correction factor" means a multiplier that is used to adjust exposure estimates based on ingestion of drinking water to take into account exposure to hazardous substances that are volatilized and inhaled during use of the water.

"Initial investigation" means a remedial action that consists of an investigation conducted under WAC [173-340-310](#).

"Institutional control" means a measure undertaken to limit or prohibit activities that may interfere with the integrity of an interim action or a cleanup action or result in exposure to hazardous substances at the site. An institutional control is a type of remedial action. For examples of institutional controls, see WAC [173-340-440](#)(1).

"Integrated risk information system" or "IRIS" means a database developed by the United States Environmental Protection Agency that provides a summary of information on hazard identification and dose-response assessment for specific hazardous substances.

"Interim action" means a remedial action conducted under WAC [173-340-430](#).

"Interspecies scaling factor" means the conversion factor used to take into account differences between animals and humans.

"Land's method" means the method for calculating an upper confidence limit for the mean of a lognormal distribution, described in the following publications:

- (a) Land, C.E., 1971. "Confidence intervals for linear functions of the normal mean and variance." *Annals of Mathematics and Statistics*. Volume 42, pages 1187-1205.
- (b) Land, C.E., 1975. "Tables of confidence limits for linear functions of the normal mean and variance." In: *Selected Tables in Mathematical Statistics*, Volume III, pages 385-419. American Mathematical Society, Providence, Rhode Island.

"Legally applicable requirements" means those cleanup standards, standards of control, and other human health and environmental protection requirements, criteria, or limitations adopted under state or federal law that specifically address a hazardous substance, cleanup action, location, or other circumstances at the site.

"Lowest observed adverse effect level" or "LOAEL" means the lowest concentration of a hazardous substance at which there is a statistically or biologically significant increase in the frequency or severity of an adverse effect between an exposed population and a control group.

“Maximum contaminant level” or “MCL” means the maximum concentration of a contaminant established by either the Washington state board of health or the United States Environmental Protection Agency under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) and published in chapter [246-290](#) WAC or 40 C.F.R. Part 141.

“Maximum contaminant level goal” or “MCLG” means the maximum concentration of a contaminant established by either the Washington state board of health or the United States Environmental Protection Agency under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) and published in chapter [246-290](#) WAC or 40 C.F.R. Part 141 for which no known or anticipated adverse effects on human health occur, including an adequate margin of safety.

“Method detection limit” or “MDL” means the minimum concentration of a compound that can be measured and reported with 99 percent confidence that the value is greater than zero.

“Millirem” or “mrem” means the measure of the dose of any radiation to body tissue in terms of its estimated biological effect relative to a dose received from an exposure to one roentgen (R) of X-rays. One millirem equals 0.001 rem.

“Mixed funding” means any funding provided to a potentially liable person from the model toxics control capital account under WAC [173-340-560](#).

“Model remedy” means a set of technologies, procedures, and monitoring protocols identified by ecology for use in routine types of cleanup projects at facilities that have common features and lower risk to human health and the environment.

“Model Toxics Control Act” or “act” means chapter [70A.305](#) RCW, first passed by the voters in the November 1988 general election as Initiative 97 and as since amended by the legislature.

“National priorities list” or “NPL” means the list of sites designated as a national priority by the United States Environmental Protection Agency under Section 105(a)(8)(B) of the federal cleanup law, 42 U.S.C. 9605(a)(8)(B).

“Natural attenuation” means a variety of physical, chemical or biological processes that, under favorable conditions, act without human intervention to reduce the mass, toxicity, mobility, volume, or concentration of hazardous substances in the environment. These in situ processes include: Natural biodegradation; dispersion; dilution; sorption; volatilization; and chemical or biological stabilization, transformation, or destruction of hazardous substances. See WAC [173-340-370](#)(7) for a description of the expected role of natural attenuation in site cleanup. A cleanup action that includes natural attenuation and conforms to the expectation in WAC [173-340-370](#)(7) can be considered an active remedial measure.

“Natural background” means the concentration of a hazardous substance consistently present in the environment that has not been influenced by localized human activities. For example, several metals and radionuclides naturally occur in the bedrock, sediments, and soils of Washington state due solely to the geologic processes that formed these materials. The concentration of these hazardous substances would be considered natural background. Also, low concentrations of some particularly persistent organic compounds such as polychlorinated biphenyls (PCBs) can be found in surficial soils and sediment throughout much of the state due to global distribution

of these hazardous substances. These low concentrations would be considered natural background. Similarly, concentrations of various radionuclides that are present at low concentrations throughout the state due to global distribution of fallout from bomb testing and nuclear accidents would be considered natural background. Compare “area background.”

“Natural biodegradation” means in situ biological processes such as aerobic respiration, anaerobic respiration, and cometabolism, that occur without human intervention and that break down hazardous substances into other compounds or elements. The process is typically a multiple step process and may or may not result in organic compounds being completely broken down or mineralized to carbon dioxide and water.

“Natural person” means any unincorporated individual or group of individuals. The term “individual” is synonymous with “natural person.”

“Nonaqueous phase liquid” or **“NAPL”** means a hazardous substance that is present in the soil, bedrock, groundwater, or surface water as a liquid not dissolved in water. The term includes both light nonaqueous phase liquid (LNAPL) and dense nonaqueous phase liquid (DNAPL).

“No further action sites list” means a list of sites for which ecology or PLIA has determined no further remedial action is necessary under state cleanup law to meet the criteria in WAC [173-340-330](#)(5). For each listed site, the list also identifies whether institutional controls or periodic reviews remain necessary at the site. Ecology maintains the list under WAC [173-340-335](#).

“No observed adverse effect level” or **“NOAEL”** means the exposure level at which there are no statistically or biologically significant increases in frequency or severity of adverse effects between the exposed population and its appropriate control. Some effects may be produced at this level, but they are not considered to be adverse, nor precursors to specific adverse effects.

“Nonpotable” means not a current or potential source of drinking water. See WAC [173-340-720](#) and [173-340-730](#) for criteria for determining if groundwater or surface water is a current or potential source of drinking water.

“Null hypothesis” means an assumption about hazardous substance concentrations at a site when evaluating compliance with cleanup levels established under this chapter. The null hypothesis is that the site is contaminated at concentrations that exceed cleanup levels. This does not apply to cleanup levels based on background concentrations where other appropriate statistical methods supported by a power analysis would be more appropriate to use.

“Oral RFD conversion factor” means the conversion factor used to adjust an oral reference dose (which is typically based on an administered dose) to a dermal reference dose (which is based on an absorbed dose).

“Order” means an enforcement order issued under WAC [173-340-540](#) or an agreed order issued under WAC [173-340-530](#).

“Overburdened community” means the term as defined in RCW [70A.02.010](#)(11).

“Owner or operator” means any person that meets the definition of this term in RCW [70A.305.020](#)(22).

“PAHs (carcinogenic)” or “cPAHs” means those polycyclic aromatic hydrocarbons substances, PAHs, identified as A (known human) or B (probable human) carcinogens by the United States Environmental Protection Agency. These include benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene.

“Performance monitoring” means a type of compliance monitoring described in WAC [173-340-410](#).

“Periodic review” means a remedial action that consists of a review conducted by ecology under WAC [173-340-420](#).

“Permanent solution” or “permanent cleanup action” means a cleanup action in which cleanup standards of Part 7 of this chapter can be met without further action being required at the site being cleaned up or any other site involved with the cleanup action, other than the approved disposal of any residue from the treatment of hazardous substances.

“Person” means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

“Picocurie” or “pCi” means 10^{-12} curie.

“PLIA” means the pollution liability insurance agency.

“Point of compliance” means the point or points where cleanup levels established in accordance with WAC [173-340-720](#) through [173-340-760](#) must be attained. This term includes both standard and conditional points of compliance. A conditional point of compliance for particular environmental media is only available as provided in WAC [173-340-720](#) through [173-340-760](#).

“Polychlorinated biphenyls” or “PCB mixtures” means those aromatic compounds containing two benzene nuclei with two or more substituted chlorine atoms. For the purposes of this chapter, PCB includes those congeners which are identified using the appropriate analytical methods specified by ecology under WAC [173-340-830](#).

“Polycyclic aromatic hydrocarbons” or “PAH” means those hydrocarbon molecules composed of two or more fused benzene rings. For the purpose of this chapter, PAH includes those compounds which are identified and quantified using the appropriate analytical methods specified by ecology under WAC [173-340-830](#). The specific compounds generally included are acenaphthene, acenaphthylene, fluorene, naphthalene, anthracene, fluoranthene, phenanthrene, benzo[a]anthracene, benzo[b]fluoranthene, benzo[k]fluoranthene, pyrene, chrysene, benzo[a]pyrene, dibenzo[a,h]anthracene, indeno[1,2,3-cd]pyrene, and benzo[ghi]perylene.

“Potentially liable person” means any person who ecology finds, based on credible evidence, to be liable under RCW [70A.305.040](#).

“Practicable” means capable of being designed, constructed, and implemented in a reliable and effective manner including consideration of cost. An alternative is not practicable if its incremental costs are disproportionate to its incremental degree of benefits, compared to

another alternative. Whether a cleanup action uses permanent solutions to the maximum extent practicable is determined using the procedures in WAC [173-340-360](#)(5).

“Practical quantitation limit” or “PQL” means the lowest concentration that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness, and comparability during routine laboratory operating conditions, using ecology approved methods.

“Probabilistic risk assessment” means a mathematical technique for assessing the variability and uncertainty in risk calculations. This is done by using distributions for model input parameters, rather than point values, where sufficient data exists to justify the distribution. These distributions are then used to compute various simulations using tools such as Monte Carlo analysis to examine the probability that a given outcome will result (such as a level of risk being exceeded). When using probabilistic techniques under this chapter for human health risk assessment, distributions may not be used to represent dose response relationships (reference dose, reference concentration, cancer potency factor).

“Prospective purchaser” means a person who is not currently liable for remedial action at a site and who proposes to purchase, redevelop, or reuse the site.

“Protection monitoring” means a type of compliance monitoring described in WAC [173-340-410](#).

“Public notice” means the notice and opportunity to comment required under WAC [173-340-600](#)(2).

“Public participation plan” means a plan prepared under WAC [173-340-600](#) to encourage coordinated and effective public involvement tailored to the public's needs at a particular site.

“Rad” means that quantity of ionizing radiation that results in the absorption of 100 ergs of energy per gram of irradiated material, regardless of the source of radiation.

“Radionuclide” means a type of atom that spontaneously undergoes radioactive decay. Radionuclides are hazardous substances under the act.

“Reasonable maximum exposure” means the highest exposure that can be reasonably expected to occur for a human or other living organisms, including a likely vulnerable population or overburdened community, at a site under current and potential future site use.

“Reference dose” or “RFD” means a benchmark dose, derived from the NOAEL or LOAEL for a hazardous substance by consistent application of uncertainty factors used to estimate acceptable daily intake doses and an additional modifying factor, which is based on professional judgment when considering all available data about a substance, expressed in units of milligrams per kilogram body weight per day. This includes chronic reference doses, subchronic reference doses, and developmental reference doses.

“Regulated substance” means the term as defined in chapter [173-360A](#) WAC. All regulated substances are hazardous substances, as defined in this chapter.

“Release” means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

“Relevant and appropriate requirements” means those cleanup standards, standards of control, and other human health and environmental requirements, criteria, or limitations established under state and federal law that, while not legally applicable to the hazardous substance, cleanup action, location, or other circumstance at a site, ecology determines address problems or situations sufficiently similar to those encountered at the site that their use is well suited to the particular site. The criteria specified in WAC [173-340-710](#)(4) are used to determine if a requirement is relevant and appropriate.

“Rem” means the unit of radiation dose equivalent that is the dosage in rads multiplied by a factor representing the different biological effects of various types of radiation.

“Remedial investigation” means a remedial action conducted under WAC [173-340-350](#) that consists of collecting and evaluating sufficient information about a site, including the distribution of hazardous substances and the threat they pose to human health and the environment, to enable:

- (a) Cleanup standards to be established under Part 7 of this chapter; and
- (b) Cleanup action alternatives to be developed and evaluated in a feasibility study under WAC [173-340-351](#).

“Remedial investigation/feasibility study” means a remedial action that consists of both a remedial investigation and a feasibility study.

“Remediation level (REL)” means a concentration (or other method of identification) of a hazardous substance in soil, water, air, or sediment used to identify where a particular cleanup action component is required as part of a cleanup action at a site. Other methods of identification include physical appearance or location. A cleanup action selected in accordance with WAC [173-340-350](#) through [173-340-390](#) that includes remediation levels constitutes a cleanup action which is protective of human health and the environment. See WAC [173-340-355](#) for a description of the purpose of remediation levels and the requirements and procedures for developing a cleanup action alternative that includes remediation levels.

“Remedy” or “remedial action” means any action or expenditure consistent with the purposes of chapter [70A.305](#) 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.

“Restoration time frame” means the period of time needed to achieve the required cleanup levels at the points of compliance established for the site.

“Risk” means the probability that a hazardous substance, when released into the environment, will cause an adverse effect in exposed humans or other living organisms.

“Routine cleanup action” means a remedial action meeting all of the following criteria:

- Cleanup standards for each hazardous substance addressed by the cleanup are obvious and undisputed, and allow for an adequate margin of safety for protection of human health and the environment;
- It involves an obvious and limited choice among cleanup action alternatives and uses an alternative that is reliable, has proven capable of accomplishing cleanup standards, and with which ecology has experience;
- The cleanup action does not require preparation of an environmental impact statement; and
- The site qualifies under WAC [173-340-7491](#) for an exclusion from conducting a simplified or site-specific terrestrial ecological evaluation, or if the site qualifies for a simplified ecological evaluation, the evaluation is ended under WAC [173-340-7492](#)(2) or the values in Table 749-2 are used.

Routine cleanup actions consist of, or are comparable to, one or more of the following remedial actions:

- Cleanup of above-ground structures;
- Cleanup of below-ground structures;
- Cleanup of contaminated soils where the action would restore the site to cleanup levels; or
- Cleanup of solid wastes, including containers.

“Sampling and analysis plan” means a plan prepared under WAC [173-340-820](#).

“Saturated zone” means the area below the water table in which all interstices are filled with water.

“Schools” means preschools, elementary schools, middle schools, high schools, and similar facilities, both public and private, used primarily for the instruction of minors.

“Sediment” means the term as defined in WAC [173-204-505](#).

“Sensitive environment” means an area of particular environmental value, where a release could pose a greater threat than in other areas including: Wetlands; critical habitat for endangered or threatened species; national or state wildlife refuge; critical habitat, breeding or feeding area for fish or shellfish; wild or scenic river; rookery; riparian area; big game winter range.

“Site” means the same as "facility."

“Site hazard assessment and ranking” means a remedial action that consists of an assessment and ranking conducted under WAC [173-340-320](#).

“Soil” means a mixture of organic and inorganic solids, air, water, and biota that exists on the earth's surface above bedrock, including materials of anthropogenic sources such as slag, sludge, etc.

“Soil biota” means invertebrate multicellular animals that live in the soil or in close contact with the soil.

“State cleanup law” means the Model Toxics Control Act, chapter [70A.305](#) RCW, and the cleanup regulations adopted under that act, chapters [173-340](#) and [173-204](#) WAC.

“Subchronic reference dose” means an estimate (with an uncertainty of an order of magnitude or more) of a daily exposure level for the human population, including sensitive subgroups, that is likely to be without appreciable risk of adverse effects during a portion of a lifetime.

“Surface water” means lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the state of Washington or under the jurisdiction of the state of Washington.

“Technically possible” means capable of being designed, constructed, and implemented in a reliable and effective manner, regardless of cost.

“Terrestrial ecological receptors” means plants and animals that live primarily or entirely on land.

“Threatened or endangered species” means species listed as threatened or endangered under the federal Endangered Species Act 16 U.S.C. Section 1533, or classified as threatened or endangered by the state fish and wildlife commission under WAC [220-200-100](#) or [220-610-010](#).

“Total excess cancer risk” means the upper bound on the estimated excess cancer risk associated with exposure to multiple hazardous substances and multiple exposure pathways.

“Total petroleum hydrocarbons” or **“TPH”** means any fraction of crude oil that is contained in plant condensate, crankcase motor oil, gasoline, aviation fuels, kerosene, diesel motor fuel, benzol, fuel oil, and other products derived from the refining of crude oil. For the purposes of this chapter, TPH generally means those fractions of the above products that are the total of all hydrocarbons quantified by analytical methods NWTPH-Gx; NWTPH-Dx; volatile petroleum hydrocarbons (VPH) for volatile aliphatic and volatile aromatic petroleum fractions; and extractable petroleum hydrocarbons (EPH) for nonvolatile aliphatic and nonvolatile aromatic petroleum fractions, as appropriate, or other test methods approved by ecology.

“Type I error” means the error made when it is concluded that an area of a site is below cleanup levels when it actually exceeds cleanup levels. This is the rejection of a true null hypothesis.

“Underground storage tank” or **“UST”** means the term as defined in chapter [173-360A](#) WAC.

“Unrestricted site use conditions” means restrictions on the use of the site or natural resources affected by releases of hazardous substances from the site are not required to ensure continued protection of human health and the environment.

“Upper bound on the estimated excess cancer risk of one in 100,000” means the upper 95th percent confidence limit on the estimated risk of one additional cancer above the background cancer rate per 100,000 individuals.

“Upper bound on the estimated excess cancer risk of one in 1,000,000” means the upper 95th percent confidence limit on the estimated risk of one additional cancer above the background cancer rate per 1,000,000 individuals.

“UST system” means the term as defined in chapter [173-360A](#) WAC.

“UST system operator” means the same as “operator” in chapter [173-360A](#) WAC.

“UST system owner” means the same as “owner” in chapter [173-360A](#) WAC.

“Volatile organic compound” means those carbon-based compounds listed in United States Environmental Protection Agency methods 502.2, 524.2, 551, 601, 602, 603, 624, 1624C, 1666, 1671, 8011, 8015B, 8021B, 8031, 8032A, 8033, 8260B, and those with similar vapor pressures or boiling points. For petroleum, volatile means aliphatic and aromatic constituents up to and including EC12, plus naphthalene, 1-methylnaphthalene and 2-methylnaphthalene.

“Vulnerable population” means the term as defined in RCW [70A.02.010](#)(14).

“Wastewater facility” means all structures and equipment required to collect, transport, treat, reclaim, or dispose of domestic, industrial, or combined domestic/industrial wastewaters.

“Wetlands” means the term as defined in WAC [173-201A-020](#).

“Wildlife” means any nonhuman vertebrate animal other than fish.

“Zoned for (a specified) use” means the use is allowed as a permitted or conditional use under the local jurisdiction's land use zoning ordinances. A land use that is inconsistent with the current zoning but allowed to continue as a nonconforming use or through a comparable designation is not considered to be zoned for that use.

WAC 173-340-210 Usage.

For the purposes of this chapter, the following apply:

- (1) Unless the context clearly requires otherwise, the use of the singular includes the plural and conversely.
- (2) The terms **“applicable,” “appropriate,” “relevant,” “unless otherwise directed by ecology”** and similar terms implying discretion mean as determined by ecology, with the burden of proof on other persons to demonstrate that the requirements are or are not necessary.
- (3) **“Approved”** means for ecology-conducted or ecology-supervised remedial actions.
- (4) **“Conduct”** means to perform or undertake whether directly or through an agent or contractor, unless this chapter expressly provides otherwise.
- (5) **“Include”** means included, but not limited to.
- (6) **“May”** or **“should”** means the provision is optional and permissive, and does not impose a requirement.
- (7) **“Shall,” “must,”** or **“will”** means the provision is mandatory.
- (8) **“Threat”** means threat or potential threat.
- (9) **“Under”** means pursuant to, subject to, required by, established by, in accordance with, and similar expressions of legislative or administrative authorization or direction.

Part 3 – Site Reports and Cleanup Decisions

WAC 173-340-300 Site discovery and reporting.

- (1) **Purpose.** This section sets forth the requirements for reporting a release or threatened release of a hazardous substance to the environment that may pose a threat to human health or the environment.
- (2) **Applicability and timing.** Except as provided under (a) of this subsection, within 90 days of discovering a release or threatened release of a hazardous substance to the environment that may pose a threat to human health or the environment, an owner or operator must report the release to ecology. All other persons are encouraged to report such a release to ecology.
- (a) **Exemptions.** An owner or operator does not need to report the following releases under this section:
- (i) A release previously reported to ecology in fulfillment of a reporting requirement in this chapter or in another law or regulation, including a release previously reported to ecology under chapter [173-360A](#) WAC;
 - (ii) A release from a heating oil tank previously reported to PLIA under WAC [374-45-030](#);
 - (iii) A release previously reported to the United States Environmental Protection Agency under CERCLA, Section 103(c) (42 U.S.C. Sec. 9603(c));
 - (iv) A release previously reported to the state division of emergency management under RCW [90.56.280](#);
 - (v) Application of pesticides and fertilizers for their intended purposes and according to label instructions;
 - (vi) Lawful and nonnegligent use of hazardous substances by a natural person for personal or domestic purposes;
 - (vii) A release in accordance with a permit that authorizes the release;
 - (viii) Except for a release specified under (b)(iii) of this subsection, a release to the air;
 - (ix) A release discovered in a public water system regulated by the department of health; or
 - (x) A release to a permitted wastewater facility.

An exemption from the reporting requirements in this section does not imply a release from liability under the state cleanup law.

- (b) **Examples.** An owner or operator should use best professional judgment in deciding whether a release or threatened release of a hazardous substance to the environment may pose a threat to human health or the environment. The following, which is not an exhaustive list, are examples of situations that an owner or operator should generally report under this section:

- (i) Contamination in a water supply well;
- (ii) Contaminated seeps, sediment or surface water;
- (iii) Vapors in a building, utility vault or other structure that appear to be entering the structure from nearby contaminated soil or groundwater;
- (iv) Non-aqueous phase liquid, such as a petroleum product or chlorinated solvent, on the surface of the ground or in the groundwater (free product);
- (v) Any contaminated soil or unpermitted disposal of waste materials that would be classified as a hazardous waste under federal or state law;
- (vi) Any abandoned containers such as drums or tanks, above ground or buried, still containing more than trace residuals of hazardous substances;
- (vii) Sites where unpermitted industrial waste disposal has occurred;
- (viii) Sites where hazardous substances have leaked or been dumped on the ground; and
- (ix) Leaking underground petroleum storage tanks not already reported under chapter [173-360A](#) WAC.

(3) Content of release report. An owner or operator must include the following information in a release report, to the extent known:

- (a) The identity and location of the hazardous substance;
- (b) The circumstances of the hazardous substance release and its discovery; and
- (c) Any planned, ongoing, or completed independent remedial actions to investigate or clean up the release.
 - (i) See WAC [173-340-515](#)(4) and [173-340-450](#) for additional reporting requirements for independent remedial actions.
 - (ii) See WAC [173-340-310](#)(5) for ecology's authority to defer completing an initial investigation of a release to review independent remedial actions completed within 90 days of release discovery.

(4) Other release reporting requirements. Nothing in this section eliminates any obligations to comply with reporting requirements in other laws or permits including, but not limited to, the following:

- (a) **Releases from regulated UST systems.** Under chapter [173-360A](#) WAC, UST system owners and operators and regulated service providers must report a confirmed release of a regulated substance from an UST system to ecology within 24 hours. As specified in subsection (2)(a)(i) of this section, a release previously reported to ecology under chapter [173-360A](#) WAC is exempt from the release reporting requirements in this section; however, the release must still be investigated and cleaned up in accordance

with the state cleanup law. WAC [173-340-450](#) specifies interim actions that UST system owners and operators must perform immediately or shortly after confirming a release to reduce the threats posed by the release, prevent any further release, and characterize the nature and extent of the release;

- (b) Releases from heating oil tanks.** Under chapter [374-45](#) WAC, owners and operators of a heating oil tank and owners of the property where the tank is located must report a suspected or confirmed release from the tank to PLIA within 90 days. As specified in subsection (2)(a)(ii) of this section, a release previously reported to ecology under chapter [374-45](#) WAC is exempt from the release reporting requirements in this section; however, the release must still be investigated and cleaned up in accordance with the state cleanup law.
- (5) Reservation of rights.** Nothing in this section precludes ecology from taking any actions it deems appropriate to identify contaminated sites consistent with chapter [70A.305](#) RCW.

WAC 173-340-310 Initial investigation.

- (1) **Purpose.** The purpose of the initial investigation is to determine:
- (a) Whether there has been a release or threatened release of a hazardous substance to the environment;
 - (b) Whether the release or threatened release may pose a threat to human health or the environment;
 - (c) Whether the population that may be threatened includes a likely vulnerable population or overburdened community;
 - (d) Whether further remedial action is necessary under state cleanup law to confirm whether there has been a release or threatened release that poses a threat to human health or the environment;
 - (e) Whether further remedial action is necessary under state cleanup law to address the threat to human health and the environment posed by the release or threatened release. This determination is based on the criteria in WAC [173-340-330\(5\)](#);
 - (f) Whether an emergency remedial action or an interim action is necessary under state cleanup law to address the threat, and whether persons in the potentially affected vicinity need to be notified of such action;
 - (g) Whether action under another state or federal law is appropriate; and
 - (h) The current owners and operators of the site.
- (2) **Applicability.** Ecology will complete an initial investigation unless:
- (a) The release is exempt from reporting under WAC [173-340-300\(2\)\(a\)](#);
 - (b) The circumstances associated with the release or threatened release are known to ecology and have previously been or currently are being evaluated by ecology or another government agency; or
 - (c) Ecology does not have a reasonable basis to believe that there has been a release or threatened release of a hazardous substance that may pose a threat to human health or the environment.
- (3) **Performance.** To make the determinations specified in subsection (1) of this section, ecology will review readily available information and may collect, or request other persons to collect, additional information.
- (4) **Reliance on others.** Ecology may rely on another government agency or a contractor to ecology to conduct an initial investigation on its behalf, provided:
- (a) The agency or contractor is not suspected of having contributed to the release or threatened release; and
 - (b) The agency or contractor has no conflict of interest.

(5) Timing.

- (a)** Except as provided under (b) of this subsection, ecology will complete an initial investigation within 90 days of discovering a release or threatened release or receiving a release report under WAC [173-340-300](#).
- (b)** If an independent investigation, interim action, or cleanup action is completed within 90 days of the discovery of a release or threatened release, ecology will complete an initial investigation by the earlier of the following:
 - (i)** Ninety days after receiving the independent remedial action report required under WAC [173-340-515](#)(4); or
 - (ii)** One hundred eighty days after discovering a release or threatened release or receiving a release report.

(6) Determinations and next steps. Within 30 days of completing the initial investigation, ecology will make one of the following determinations and take the applicable steps:

- (a)** No release or threatened release occurred. In this case, ecology will notify the owner and operator in writing of its determination;
- (b)** A release or threatened release occurred, but does not pose a threat to human health or the environment that requires remedial action under state cleanup law. This determination must be based on factors other than performance of remedial action. In this case, ecology will notify the owner and operator in writing of its determination;
- (c)** A release or threatened release occurred that posed a threat to human health or the environment, but no further remedial action is necessary under state cleanup law to address that threat based on the criteria in WAC [173-340-330](#)(5). In this case, ecology will take the following steps:
 - (i)** Perform a site hazard assessment and ranking in accordance with WAC [173-340-320](#);
 - (ii)** List the site on ecology's no further action sites list in accordance with WAC [173-340-335](#)(2);
 - (iii)** Make any initial investigation report publicly available on ecology's website;
 - (iv)** Notify the owner and operator in writing of ecology's determination; and
 - (v)** Notify the public of ecology's determination in the *Contaminated Site Register* under WAC [173-340-600](#)(7). The notice must include instructions on how to sign up for the site-specific electronic alerts provided by ecology under WAC [173-340-600](#)(6);
- (d)** A release or threatened release may have occurred that poses a threat to human health or the environment, and further remedial action is necessary under state cleanup law to confirm the threat. In this case, ecology will take the steps specified under (e) of this subsection;

- (e) A release or threatened release occurred that poses a threat to human health or the environment, and further remedial action is necessary under state cleanup law to address the threat based on the criteria in WAC [173-340-330](#)(5). In this case, ecology will take the following steps:
- (i) Perform a site hazard assessment and ranking in accordance with WAC [173-340-320](#);
 - (ii) List the site on the contaminated sites list in accordance with WAC [173-340-330](#)(2);
 - (iii) Make any initial investigation report publicly available on ecology's website;
 - (iv) Notify the owner and operator, and any person who ecology has preliminarily determined to be liable under WAC [173-340-500](#)(1), in writing of ecology's determination. The notice may be combined with the potentially liable person status letter in WAC [173-340-500](#). The notice must include:
 - (A) The basis for ecology's determination;
 - (B) The site's hazard rankings;
 - (C) Information on the cleanup process provided for in this chapter;
 - (D) A statement that it is ecology's policy to work cooperatively with persons to accomplish prompt and effective cleanups;
 - (E) A statement that the notice is not a determination of liability and that cooperating with ecology in planning or conducting a remedial action is not an admission of guilt or liability;
 - (F) An ecology website where information about the site is publicly available, and instructions on how to sign up for the site-specific electronic alerts provided by ecology under WAC [173-340-600](#)(6); and
 - (G) An ecology staff or office to contact about the contents of the notice;
 - (v) Notify the public of ecology's determination in the *Contaminated Site Register* under WAC [173-340-600](#)(7). The notice must include instructions on how to sign up for the site-specific electronic alerts provided by ecology under WAC [173-340-600](#)(6);
 - (vi) Notify persons within the potentially affected vicinity of the threat, if ecology determines that an emergency remedial action or an interim action is necessary under state cleanup law and that such notice is needed.
 - (A) Ecology may require the owner or operator to provide the notice on ecology's behalf. If required in writing by ecology, the owner or operator must provide the notice.

- (B) Ecology will determine the method and nature of the notice on a case-by-case basis using the methods specified in WAC [173-340-600](#).
- (f) A release or threatened release occurred that poses a threat to human health or the environment, but action under another state or federal law is appropriate. The steps ecology will take depend on the other authority identified by ecology.
- (i) For all sites where ecology determines action is appropriate under another state or federal law, ecology will:
- (A) Refer the site to the applicable government agency or program; and
- (B) Notify the owner and operator in writing of its determination.
- (ii) For sites where ecology determines action is appropriate under the federal cleanup law, the federal Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the state Hazardous Waste Management Act (chapter [70A.300](#) RCW), the state Solid Waste Management Act (chapter [70A.205](#) RCW), or the state Pollution Liability Protection Act (chapter [70A.330](#) RCW), ecology will also:
- (A) Perform a site hazard assessment and ranking in accordance with WAC [173-340-320](#);
- (B) List the site on ecology's contaminated sites list in accordance with WAC [173-340-330](#)(2);
- (C) Make any initial investigation report publicly available on ecology's website; and
- (D) Notify the public of ecology's determination in the *Contaminated Site Register* under WAC [173-340-600](#)(7). The notice must include instructions on how to sign up for the site-specific electronic alerts provided by ecology under WAC [173-340-600](#)(6).
- (7) **Reservation of rights.** Nothing in this section precludes ecology from taking or requiring appropriate remedial action at any time.

WAC 173-340-320 Site hazard assessment and ranking.

- (1) **Purpose.** The site hazard assessment and ranking process provides a method for ecology to assess and rank threats to human health and the environment posed by a site based on information readily available at the time of assessment. The site hazard assessment and ranking process satisfies the requirements of RCW [70A.305.030\(2\)\(b\)](#), and is not a substitute for a remedial investigation. Ecology uses site hazard assessments and rankings to:
- (a) Support decisions to add or remove sites from the contaminated sites list under WAC [173-340-330](#) or the no further action sites list under WAC [173-340-335](#);
 - (b) Prioritize remedial actions and allocate agency resources among and within sites as part of program planning and assessment under WAC [173-340-340](#);
 - (c) Inform the public and the legislature about the threats posed by contaminated sites;
 - (d) Reflect changes in threats posed by a site based on new information or changes in site conditions; and
 - (e) Identify whether the population threatened includes a likely vulnerable population or overburdened community.
- (2) **Development.** Ecology will establish and maintain a site hazard assessment and ranking process.
- (a) **Functional requirements.** The site hazard assessment and ranking process must enable ecology to use readily available information to:
 - (i) Rank the potential exposure of human and environmental receptors to confirmed or suspected releases of hazardous substances through each environmental medium;
 - (ii) Rank the severity of such exposures to human health and the environment;
 - (iii) Identify whether the potentially exposed population includes a likely vulnerable population or overburdened community;
 - (iv) Identify the environmental health disparity ranking of the potentially exposed population using the environmental health disparities map developed pursuant to RCW [43.70.815](#) or other readily available information; and
 - (v) Report the assessor's level of confidence in the information used for the assessment.
 - (b) **Performance standards.** Ecology will establish performance standards for assessing the technical validity, efficiency, consistency, and practical utility of the site hazard assessment and ranking process.
 - (c) **Quality assurance.** Ecology will periodically assess whether the site hazard assessment and ranking process meets the performance standards established under (b) of this subsection, and update the process as appropriate.

- (d) **Public participation.** When establishing the site hazard assessment and ranking process or making any change to the process that could affect hazard rankings, ecology will provide the public with notice and an opportunity to comment. The public comment period must be at least 30 days.
- (3) **Implementation.**
- (a) **Applicability and timing.**
- (i) Ecology will perform a site hazard assessment and ranking before adding or removing a site from the contaminated sites list under WAC [173-340-330](#) or the no further action sites list under WAC [173-340-335](#).
- (ii) For sites on the contaminated sites list on the effective date of this section, ecology will conduct a site hazard assessment and ranking as resources permit. As part of the strategic plan required under WAC [173-340-340](#), ecology will develop goals and strategies for completing a site hazard assessment and ranking of such sites.
- (iii) Ecology may also conduct a site hazard assessment and ranking when new information becomes available or when site conditions change.
- (b) **Performance.** Ecology will review readily available information when conducting a site hazard assessment and ranking.
- (c) **Reliance on others.** Ecology may rely on another government agency or a contractor to ecology to perform a site hazard assessment and ranking on its behalf, provided:
- (i) The agency or contractor is not suspected of having contributed to the release or threatened release; and
- (ii) The agency or contractor has no conflict of interest.
- (d) **Notification.** Upon completing a site hazard assessment and ranking, ecology will:
- (i) Make the site's current hazard rankings publicly available on ecology's website under WAC [173-340-600](#)(5). The hazard rankings will include the results specified in subsection (2)(a) of this section; and
- (ii) If requested, notify a person electronically under WAC [173-340-600](#)(6).

WAC 173-340-330 Contaminated sites list.

- (1) **Purpose.** The purpose of the contaminated sites list is to identify:
- (a) All sites for which ecology or PLIA has determined further remedial action is necessary under state cleanup law to:
 - (i) Confirm whether there is a threat to human health or the environment posed by a release or threatened release; or
 - (ii) Address the threat posed by a release or threatened release, based on the criteria in subsection (5) of this section; and
 - (b) For each listed site, the site's current remedial action status.
- (2) **Adding a site to the list.** After an initial investigation under WAC [173-340-310](#) or [374-45-040](#), ecology will add a site to the contaminated sites list if ecology or PLIA determines further remedial action is necessary under state cleanup law to:
- (a) Confirm whether there is a threat to human health or the environment posed by a release or threatened release; or
 - (b) Address the threat posed by a release or threatened release, based on the criteria in subsection (5) of this section.
- (3) **Tracking the remedial action status of a site.** For each site on the contaminated sites list, ecology will track and include on the list the site's remedial action status. Ecology may change the remedial action status of a site to reflect current conditions.
- (4) **Splitting or combining sites on the list.** Ecology may split or combine sites on the contaminated sites list consistent with its authority under chapter [70A.305](#) RCW.
- (5) **Removing a site from the list.** Ecology will remove a site from the contaminated sites list if, and only if, ecology or PLIA determines that the listing is erroneous or that the site meets the applicable criteria in this subsection. A person does not need to submit a petition under subsection (6) of this section for ecology to remove a site from the contaminated sites list.
- (a) **Permanent cleanup action.** For sites where the selected cleanup action is permanent, a site must meet the following criteria to be removed from the list:
 - (i) All cleanup standards have been achieved; and
 - (ii) All necessary remedial actions under state cleanup law have been completed.
 - (b) **Nonpermanent cleanup action without containment.** For sites where the selected cleanup action is not permanent and does not include containment, a site must meet the following criteria to be removed from the list:
 - (i) All cleanup standards have been achieved; and
 - (ii) All necessary remedial actions under state cleanup law, except confirmation monitoring and periodic reviews, have been completed.

- (c) **Nonpermanent cleanup action with containment.** For sites where the selected cleanup action is not permanent and includes containment, a site must meet the following criteria to be removed from the list:
- (i) All cleanup standards have been achieved;
 - (ii) All necessary construction has been completed;
 - (iii) All necessary operation and maintenance activities have been completed, except for the following:
 - (A) Passive maintenance activities, such as monitoring, inspections, or periodic repairs; or
 - (B) For solid waste landfills permitted under chapter [173-340](#), [173-350](#), or [173-351](#) WAC, any operation or maintenance activities of systems for explosive gas control, leachate collection, or surface water run-on or runoff management;
 - (iv) All necessary performance monitoring has been completed;
 - (v) Sufficient confirmation monitoring has been completed to demonstrate that the cleanup action effectively contains the hazardous substances of concern at the site;
 - (vi) Any required institutional controls are in place and have been demonstrated to be effective in protecting public health and the environment and the integrity of the cleanup action;
 - (vii) Any required financial assurances are in place; and
 - (viii) Written documentation is present in ecology files that describes what hazardous substances remain on site, where they are located, and the long-term monitoring and maintenance obligations at the site.
- (6) **Petitions for removing a site from the list.** A site owner, operator, or potentially liable person may petition ecology to remove a site from the contaminated sites list if ecology has not removed the site from the list under subsection (5) of this section.
- (a) **Content.** A petition must be in writing and include the following:
- (i) For claims the listing of the site is erroneous, sufficient documentation of investigations to demonstrate to ecology's satisfaction that the listing is erroneous;
 - (ii) For claims based on independent remedial action, a written opinion from ecology or PLIA that no further remedial action is necessary at the site to meet the criteria in subsection (5) of this section. A person may request such an opinion from ecology under WAC [173-340-515](#)(5) or from PLIA under chapter [374-80](#) WAC, as applicable; or

- (iii) For claims based on ecology-supervised or ecology-conducted remedial action, sufficient documentation of remedial actions, including investigations, feasibility studies, interim actions, cleanup actions, and compliance monitoring, to demonstrate to ecology's satisfaction that no further remedial action is necessary at the site to meet the criteria in subsection (5) of this section.
 - (b) **Response.** Ecology will review the petition as resources permit. Unless ecology determines that the listing is erroneous or that the site meets the criteria in subsection (5) of this section, ecology may collect from the petitioner all costs incurred by ecology in reviewing the petition. Ecology may require a deposit in advance of reviewing the petition.
- (7) **Public participation when removing a site from the list.** For an ecology-conducted or ecology-supervised remedial action, ecology will provide public notice in accordance with WAC [173-340-600](#)(17) before removing a site from the contaminated sites list. Ecology may recover the costs of providing such public participation in accordance with WAC [173-340-550](#).
- (8) **Relisting of sites.** Ecology may relist a site on the contaminated sites list that it previously removed from the list if ecology or PLIA determines further remedial action is necessary at the site to meet the criteria in subsection (5) of this section.
- (9) **Notification.**
 - (a) Ecology will make the contaminated sites list and the current list of remedial action status categories publicly available on ecology's website.
 - (b) Ecology will make a site's current listing and remedial action status publicly available on ecology's website under WAC [173-340-600](#)(5).
 - (c) If requested, ecology will notify a person electronically under WAC [173-340-600](#)(6) upon:
 - (i) Any change in a site's remedial action status;
 - (ii) Splitting or combining a site on the contaminated sites list; or
 - (iii) Removing or relisting a site on the contaminated sites list.
- (10) **Liability.** Placement of a site on the contaminated sites list does not, by itself, imply that persons associated with the site are liable under chapter [70A.305](#) RCW.

WAC 173-340-335 No further action sites list.

- (1) Purpose.** The purpose of the no further action sites list is to identify:
 - (a)** All sites where ecology or PLIA has determined no further remedial action is necessary under state cleanup law to meet the criteria in WAC [173-340-330](#)(5); and
 - (b)** For each listed site, whether institutional controls or periodic reviews remain necessary at the site.
- (2) Adding a site to the list.** Ecology will add a site to the no further action sites list if, and only if:
 - (a)** After completing an initial investigation, ecology or PLIA determines that no further remedial action is necessary under state cleanup law to meet the criteria in WAC [173-340-330](#)(5); or
 - (b)** Ecology removes the site from the contaminated sites list based on the criteria in WAC [173-340-330](#)(5).
- (3) Tracking institutional controls and periodic reviews.** For each site on the no further action sites list, ecology will identify on the list whether the site requires:
 - (a)** Institutional controls under WAC [173-340-440](#); or
 - (b)** Periodic reviews under WAC [173-340-420](#).
- (4) Removing a site from the list.** If ecology relists a site on the contaminated sites list under WAC [173-340-330](#)(8), ecology will remove the site from the no further action sites list.
- (5) Notification.**
 - (a)** Ecology will make the no further action sites list publicly available on ecology's website.
 - (b)** If requested, ecology will notify a person electronically under WAC [173-340-600](#)(6) upon adding or removing a site on the no further action sites list.

WAC 173-340-340 Program planning and assessment.

- (1) Strategic plan.** Ecology will develop and periodically update a comprehensive and integrated strategic plan for cleaning up contaminated sites. The strategic plan must prioritize contaminated sites that threaten likely vulnerable populations and overburdened communities, and consider the resource allocation factors in subsection (2) of this section. The strategic plan must include:

 - (a)** Goals and strategies for all core program functions and major initiatives;
 - (b)** Metrics to track and measure progress in accomplishing the goals and implementing the strategies; and
 - (c)** Staffing and capital funds needed to accomplish the goals and implement the strategies.
- (2) Resource allocation.** In fulfilling the objectives of this chapter, ecology will allocate staffing and capital funds based on the following factors:

 - (a)** The threats posed by a contaminated site to human health and the environment;
 - (b)** Whether the population threatened by a contaminated site includes a likely vulnerable population or overburdened community;
 - (c)** The land reuse potential and planning for a contaminated site; and
 - (d)** Other factors specified by the legislature or ecology.
- (3) Performance assessment.** Ecology will periodically assess its progress in accomplishing its goals and implementing its strategies for cleaning up contaminated sites, including its progress in cleaning up sites that threaten likely vulnerable populations and overburdened communities, using the metrics established under subsection (1)(b) of this section.
- (4) Notification.**

 - (a)** Ecology will make the strategic plans and performance assessments required under subsections (1) and (3) of this section publicly available on ecology's website.
 - (b)** Ecology will provide notice in the *Contaminated Site Register* of the following:

 - (i)** Any update to the strategic plans or performance assessments required under subsections (1) and (3) of this section; and
 - (ii)** Any additional resource allocation factors specified by the legislature or ecology under subsection (2)(d) of this section.

WAC 173-340-350 Remedial investigation.

- (1) **Purpose.** The purpose of a remedial investigation is to adequately characterize a contaminated site, including the distribution of hazardous substances and the threat they pose to human health and the environment, to enable:

 - (a) Cleanup standards to be established under Part 7 of this chapter; and
 - (b) Cleanup action alternatives to be developed and evaluated in a feasibility study under WAC [173-340-351](#).
- (2) **Applicability.**

 - (a) **Whether required.** A remedial investigation of a contaminated site must be conducted regardless of which administrative option in WAC [173-340-510](#) is used to conduct remedial action at the site.
 - (b) **Requirements.** A remedial investigation must comply with the requirements in this section and, as applicable, the following:
 - (i) For sites where there is a release or threatened release to sediment, the applicable requirements in WAC [173-204-550](#).
 - (ii) For sites on the national priorities list, the applicable requirements under the federal cleanup law.
- (3) **Timing and phasing.**

 - (a) Except as otherwise directed by ecology, a remedial investigation must be completed before cleanup standards are established and a cleanup action is selected. An emergency remedial action or an interim action may be conducted before a remedial investigation/feasibility study is completed.
 - (b) A remedial investigation may be conducted, or required by ecology to be conducted, for the entire site or for separate parts of a site, such as a sediment cleanup unit as defined in WAC [173-204-505](#).
 - (c) A remedial investigation and a feasibility study may be conducted, or required by ecology to be conducted, as a single step or as separate steps in the cleanup process.
 - (d) A remedial investigation may be conducted, or required by ecology to be conducted, in phases. For example, additional remedial investigation may be necessary to fill data gaps identified in earlier investigations or to determine the applicability of a model remedy at a site.
- (4) **Administrative options and requirements.** A remedial investigation may be conducted under any of the administrative options for remedial action described in WAC [173-340-510](#). Reporting and public participation requirements depend on the administrative option used to conduct remedial action.

- (a) **Ecology-conducted or ecology-supervised remedial actions.** For an ecology-conducted or ecology-supervised remedial investigation, ecology will provide or require:

 - (i) A remedial investigation work plan that complies with the requirements in subsection (5)(b) of this section and WAC [173-340-840](#). For ecology-supervised remedial actions, ecology may require submittal of a work plan for its review and approval;
 - (ii) A remedial investigation report that complies with the requirements in subsection (5)(g) of this section and WAC [173-340-840](#). For ecology-supervised remedial actions, ecology may require submittal of a report for its review and approval; and
 - (iii) Public notice of a remedial investigation report in accordance with WAC [173-340-600](#)(13).
- (b) **Independent remedial actions.**

 - (i) Independent remedial investigations of a site must be reported to ecology in accordance with WAC [173-340-515](#). Such investigations may need to be reported separately upon completion (see WAC [173-340-515](#)(4)(a)). Reports must include, as appropriate, the information specified in subsection (5)(g) of this section.
 - (ii) Ecology will notify the public of an independent investigation report in accordance with WAC [173-340-600](#)(20).
- (5) **Steps.** Except as otherwise directed by ecology, a remedial investigation must be conducted in accordance with the following steps.

 - (a) **Step 1: Identify scope.** Identify the scope of the remedial investigation. The scope depends on many factors, including the nature and extent of contamination, the exposure pathways of concern, the human and ecological receptors potentially impacted by the contamination, the characteristics of the site, the type of cleanup action alternatives likely to be evaluated, and information previously obtained about the site. To determine the scope, do the following:
 - (i) Identify what information is needed about the site to comply with the requirements in (c) of this subsection and chapter [197-11](#) WAC, the State Environmental Policy Act rules (see WAC [197-11-250](#));
 - (ii) Assemble and evaluate relevant information collected during any prior remedial actions at the site, such as an initial investigation or an interim action. Previously collected information may be relied upon in the investigation to avoid duplication; and
 - (iii) Identify what additional information needs to be collected during the investigation.

- (b) **Step 2: Develop work plan.** Develop a remedial investigation work plan to collect and evaluate the information identified in Step 1. If required by ecology under subsection (4)(a)(i) of this section, submit the work plan for ecology's review and approval.
- (i) **Content.** Except as otherwise directed by ecology, include the following in the work plan:
- (A) The scope of the investigation identified in Step 1, including a summary of available information about the site and data gaps needing to be addressed by the investigation;
 - (B) A preliminary conceptual site model, as defined in WAC [173-340-200](#);
 - (C) A target concentration for each hazardous substance in each contaminated environmental medium identified in the preliminary conceptual site model under (b)(i)(B) of this subsection;
 - (D) A sampling and analysis plan meeting the requirements in WAC [173-340-820](#), including the analytical methods that enable detection of the target concentrations identified in (b)(i)(C) of this subsection;
 - (E) A health and safety plan meeting the requirements in WAC [173-340-810](#);
 - (F) An inadvertent discovery plan meeting the requirements in WAC [173-340-815](#);
 - (G) Cleanup action alternatives likely to be considered in the feasibility study, based on available information;
 - (H) Any studies needed to develop or evaluate cleanup action alternatives in the feasibility study, such as treatability or pilot studies;
 - (I) A proposed schedule for completing the remedial investigation/feasibility study and, if required, submittal of a report for ecology review and approval; and
 - (J) Any other information required by ecology.
- (ii) **Flexibility.** The work plan should remain flexible and be streamlined when possible to avoid collection and evaluation of unnecessary information. While it may be appropriate to phase investigations at some sites, ecology encourages expedited investigations. For example, using field screening methods to guide investigations and fast turnaround laboratory analyses to provide real-time feedback may be appropriate at some sites. However, in all cases, sufficient information must be collected and evaluated to meet the purposes in subsection (1) of this section.
- (c) **Step 3: Conduct investigation.** Conduct the remedial investigation in accordance with the work plan developed in Step 2.

- (d) **Step 4: Complete conceptual site model.** Based on the results of the remedial investigation conducted in Step 3 and any previously obtained information about the site, complete the development of a conceptual site model, as defined in WAC [173-340-200](#).
- (e) **Step 5: Develop proposed cleanup levels.** Based on the conceptual site model completed in Step 4, develop a proposed cleanup level for each hazardous substance within each affected environmental medium at the site in accordance with Part 7 of this chapter.
- (f) **Step 6: Determine whether feasibility study is necessary.** Based on the results of the remedial investigation conducted in Step 3 and any previously obtained information about the site, determine whether a feasibility study is necessary under WAC [173-340-351](#)(2)(a), including:
 - (i) Whether prior remedial actions conducted at the site constitute a permanent cleanup action; and
 - (ii) Whether a model remedy may be used as a cleanup action or a cleanup action component at the site.
- (g) **Step 7: Report results.** Report the results of the remedial investigation in accordance with subsection (4) of this section. Include the following information in the report:
 - (i) General information about the site, including:
 - (A) Project title;
 - (B) Name, address, and phone number of project coordinator;
 - (C) Legal description and dimensions of the site;
 - (D) Current owners and operators; and
 - (E) Chronological listing of past owners and operators and operational history;
 - (ii) Maps, figures, or diagrams illustrating relevant existing and historic site features, including:
 - (A) Sources of releases;
 - (B) Property boundaries;
 - (C) Proposed site boundaries, as defined by where hazardous substances exceed the proposed cleanup levels identified in (d)(iv) of this subsection;
 - (D) Surface topography;
 - (E) Surface and subsurface structures;

- (F) Surface water, wetlands, and undeveloped areas; and
 - (G) Utility lines and well locations;
 - (iii) The information collected in Step 3, and any information obtained from prior remedial actions relied on during the investigation. Separately include information on threats to likely vulnerable populations and overburdened communities. Previously obtained information may be summarized and referenced to avoid unnecessary duplication;
 - (iv) The conceptual site model completed in Step 4;
 - (v) The proposed cleanup levels developed in Step 5, including:
 - (A) The basis for the proposed cleanup levels; and
 - (B) Any regulatory classifications for, or laws applicable to, each environmental medium (see WAC [173-340-710](#));
 - (vi) A comparison of the proposed cleanup levels developed in Step 5 to the hazardous substance concentrations in each environmental medium;
 - (vii) If a feasibility study is determined not to be necessary in Step 6, sufficient documentation to demonstrate the basis of the determination;
 - (viii) Documentation of the proper management and disposal of any waste materials generated as a result of the remedial investigations in accordance with applicable state and federal laws; and
 - (ix) Any other information required by ecology.
- (6) **Investigations.** A remedial investigation must collect and evaluate sufficient information about a site and the surrounding area to meet the purposes in subsection (1) of this section, including the following as applicable to the site.
 - (a) **Hazardous substance sources.** Confirmed and suspected releases must be investigated to define the location, estimated quantity, areal and vertical extent, concentration within, and sources of releases. Where relevant, information on the physical and chemical characteristics and the biological effects of hazardous substances must be collected.
 - (b) **Soils.** Soils must be investigated to adequately characterize:
 - (i) The areal and vertical distribution and concentrations of hazardous substances in soils; and
 - (ii) The properties of surface and subsurface soils that are likely to influence the type and rate of hazardous substance migration or to affect the ability to implement cleanup action alternatives.

- (c) **Groundwater, geology, and hydrogeology.** Groundwater, geology, and hydrogeology must be investigated to adequately characterize:
- (i) The areal and vertical distribution and concentrations of hazardous substances in the groundwater;
 - (ii) The geologic features affecting the fate and transport of hazardous substances, such as the type, physical properties (such as permeability, density, and fracture characteristics), and distribution of bedrock and unconsolidated materials;
 - (iii) The hydrogeological features affecting the fate and transport of hazardous substances, such as:
 - (A) Groundwater flow direction, rate, and vertical and horizontal gradients for affected and potentially affected groundwater;
 - (B) Groundwater divides;
 - (C) Areas of groundwater recharge and discharge;
 - (D) Areas where groundwater interfaces with surface water;
 - (E) Location of public and private water supply wells; and
 - (F) Groundwater quality data; and
 - (iv) The geologic and hydrogeologic features that are likely to affect the ability to implement cleanup action alternatives.
- (d) **Surface water, sediments, and hydrology.** Surface water, sediments, and hydrology must be investigated to adequately characterize:
- (i) The areal and vertical distribution and concentrations of hazardous substances in surface water and sediments;
 - (ii) Significant hydrologic features, such as:
 - (A) Surface drainage patterns and quantities;
 - (B) Areas of erosion and sediment deposition, including estimates of sedimentation rates;
 - (C) Surface waters, including flow rates;
 - (D) Floodplains; and
 - (E) Actual or potential hazardous substance migration routes towards and within these features; and
 - (iii) The properties of surface and subsurface sediments that are likely to affect the type and rate of hazardous substance migration, the potential for recontamination, or the ability to implement cleanup action alternatives.

- (e) **Air and soil vapor.** The air and soil vapor must be evaluated and, where appropriate, sampled to adequately characterize the potential impacts of vapor migration on subsurface soil gas, on air quality within current and future buildings or other structures, and on outdoor ambient air. Based on contaminant concentrations in soil gas or groundwater, ecology may require expedited sampling of indoor air quality to assess the threat to human health. If the measured indoor air concentrations are higher than applicable cleanup levels, ecology may require an emergency action or an interim action to mitigate the threat to human health.
- (f) **Climate.** Sufficient information, based on best available science, must be collected on current and projected local and regional climatological characteristics to determine which could affect the migration of hazardous substances or the resilience of cleanup action alternatives. Relevant characteristics can include temperature extremes, sea level, seasonal patterns of rainfall, the magnitude and frequency of extreme storm events (such as flooding), the potential for landslides, prevailing wind direction and velocity, variations in barometric pressure, and the potential for wildfires.
- (g) **Land and resource use.** To determine the exposure or potential exposure of human and ecological receptors, including likely vulnerable populations and overburdened communities, to hazardous substances at the site, sufficient information must be collected on the following:
 - (i) The present and proposed land and resource uses of the site;
 - (ii) The comprehensive plan and zoning for the site;
 - (iii) Any sensitive environments at the site; and
 - (iv) Any habitat restoration or resource recovery goals for the site.
- (h) **Human receptors.** Sufficient information must be collected on human receptors to determine:
 - (i) Whether the receptors are reasonably likely to be exposed or potentially exposed to hazardous substances based on the land and resource uses identified in (g) of this subsection;
 - (ii) The impact or potential impact of such exposure; and
 - (iii) Whether the receptors include likely vulnerable populations or overburdened communities.
- (i) **Natural resources and ecological receptors.** Sufficient information must be collected on natural resources and ecological receptors that are reasonably likely to be exposed or potentially exposed to hazardous substances based on the land and resource uses identified in (g) of this subsection to determine the impact or potential impact of such exposure. This includes any information needed to conduct a sediment evaluation under chapter [173-204](#) WAC and any information needed to conduct a terrestrial ecological evaluation or establish an exclusion under WAC [173-340-7490](#) through [173-340-7494](#).

- (i) Where appropriate, a terrestrial ecological evaluation may be conducted so as to avoid duplicative studies of soil contamination that will be remediated to address other concerns, such as protection of human health or aquatic ecological receptors. This may be accomplished by evaluating residual threats to the environment after cleanup action alternatives for human health or aquatic ecological protection have been developed. If this approach is used, the remedial investigation may be phased. This approach may not be appropriate at a site where a hazardous substance is primarily an ecological concern and will not obviously be addressed by the cleanup action for the protection of human health, such as zinc; or at a site where the development of a human health based cleanup action is expected to be a lengthy process, and postponing the terrestrial ecological evaluation would cause further harm to the environment.
 - (ii) If a simplified or site-specific terrestrial ecological evaluation is not required under WAC [173-340-7491](#), the basis for the determination must be included in the remedial investigation report.
- (j) **Feasibility study applicability.** To determine whether a feasibility study must be conducted under WAC [173-340-351](#), sufficient information must be collected during the remedial investigation to determine whether:
 - (i) Prior remedial actions at the site constitute a permanent cleanup action and meet the criteria in WAC [173-340-330](#)(5)(a); and
 - (ii) A model remedy established by ecology may be used as a cleanup action or a cleanup action component at the site under WAC [173-340-390](#).
- (k) **Cleanup action alternatives.** If a feasibility study must be conducted under WAC [173-340-351](#), sufficient information must be collected during the remedial investigation to develop and evaluate cleanup action alternatives in the feasibility study, such as treatability or pilot studies.

WAC 173-340-351 Feasibility study.

- (1) **Purpose.** The purpose of the feasibility study is to develop and evaluate cleanup action alternatives to enable the selection of a cleanup action that meets the requirements in WAC [173-340-360](#) and conforms, as appropriate, to the expectations in WAC [173-340-370](#).
- (2) **Applicability.**

 - (a) **Whether required.** A feasibility study of cleanup action alternatives must be conducted, regardless of which administrative option in WAC [173-340-510](#) is used to conduct remedial action, except in the following circumstances.

 - (i) **Permanent cleanup action completed.** A feasibility study is not required if prior remedial actions at the site constitute a permanent cleanup action and meet the criteria in WAC [173-340-330](#)(5)(a). To qualify for this exemption, sufficient information must be collected and included in the remedial investigation report to demonstrate that the site meets the criteria (see WAC [173-340-350](#)(6)(j)(i) and (5)(f)(i) and (g)(vii)).
 - (ii) **Model remedy selected.** A feasibility study is not required to select a model remedy as the cleanup action or as a component of the cleanup action for a site (see WAC [173-340-390](#)). However, a feasibility study is still required to select any remaining cleanup action components for the site. To qualify for this exemption or partial exemption, sufficient information must be collected and included in the remedial investigation report to demonstrate that the site meets the conditions established by ecology for using the model remedy (see WAC [173-340-350](#)(6)(j)(ii) and (5)(f)(ii) and (g)(vii)).
 - (b) **Requirements.** A feasibility study must comply with the requirements in this section and, as applicable, the following:

 - (i) For sites where there is a release or threatened release to sediment, the applicable requirements in WAC [173-204-550](#); and
 - (ii) For sites on the national priorities list, the applicable requirements under the federal cleanup law.
- (3) **Timing and phasing.**

 - (a) Except as otherwise directed by ecology, a feasibility study must be completed before cleanup standards are established and a cleanup action is selected. An emergency remedial action or an interim action may be conducted before a remedial investigation/feasibility study is completed.
 - (b) A feasibility study may be conducted, or required by ecology to be conducted, for the entire site or for separate parts of a site, such as a sediment cleanup unit as defined in WAC [173-204-505](#).
 - (c) A remedial investigation and a feasibility study may be conducted, or required by ecology to be conducted, as a single step or as separate steps in the cleanup process.

- (d) A feasibility study may be conducted, or required by ecology to be conducted, in phases. For example, additional study may be necessary to evaluate the feasibility of a cleanup action alternative.
- (4) **Administrative options and requirements.** A feasibility study may be conducted under any of the administrative options for remedial action described in WAC [173-340-510](#). Reporting and public participation requirements depend on the administrative option used to conduct remedial action.
 - (a) **Ecology-conducted or ecology-supervised remedial actions.** For an ecology-conducted or ecology-supervised feasibility study, ecology will provide or require:
 - (i) A feasibility study report that complies with the requirements in subsection (6)(f) of this section and WAC [173-340-840](#). For ecology-supervised remedial actions, ecology may require submittal of a report for its review and approval; and
 - (ii) Public notice of a feasibility study report in accordance with WAC [173-340-600](#)(13).
 - (b) **Independent remedial actions.** Independent feasibility studies must be reported to ecology in accordance with WAC [173-340-515](#). Unlike for investigations conducted under WAC [173-340-350](#), such studies do not need to be reported separately upon completion (see WAC [173-340-515](#)(4)(a)). Reports must include, as appropriate, the information specified in subsection (6)(f) of this section.
- (5) **Scope.** A feasibility study must adequately evaluate a reasonable number and type of cleanup action alternatives to meet the purposes in subsection (1) of this section.
 - (a) The scope of the study depends on many factors, including the nature and extent of contamination, the exposure pathways of concern, the human and ecological receptors potentially impacted by the contamination, the characteristics of the site, the type of cleanup action alternatives being evaluated, and any previous evaluations of cleanup action alternatives.
 - (b) The study may rely on previously collected information about the site and previous evaluations of cleanup action alternatives, such as treatability or pilot studies. Such information may be summarized and incorporated by reference in the feasibility study report to avoid unnecessary duplication.
- (6) **Steps.** Except as otherwise directed by ecology, a feasibility study of cleanup action alternatives must be conducted in accordance with the following steps. The study should remain flexible to avoid collecting unnecessary information or conducting unnecessary evaluations.
 - (a) **Step 1: Identify cleanup goals.** Identify the goals for the cleanup action, in addition to compliance with the requirements in WAC [173-340-360](#). Include any planned future uses of the site and any habitat restoration or resource recovery goals for the site.

- (b) **Step 2: Identify alternatives.** Identify cleanup action alternatives for evaluation in the study. The alternatives must achieve the goals identified in Step 1 and comply with the requirements in WAC [173-340-360](#). Include:
- (i) A reasonable number and type of alternatives, taking into account:
 - (A) The characteristics and complexity of the site, including current site conditions and physical constraints; and
 - (B) The threats posed by the site to human health and the environment, including likely vulnerable populations and overburdened communities;
 - (ii) At least one permanent cleanup action alternative;
 - (iii) For each environmental medium, at least one alternative with a standard point of compliance (see Part 7 of this chapter);
 - (iv) As appropriate, alternatives with a conditional point of compliance for one or more environmental media (see Part 7 of this chapter); and
 - (v) As appropriate, alternatives relying on a combination of cleanup action components for an environmental medium (such as treatment of some soil contamination and containment of the remainder). The alternatives must specify remediation levels for each component (see WAC [173-340-355](#)).
- (c) **Step 3: Screen alternatives and components.** Based on a preliminary analysis, eliminate from further evaluation the following cleanup action alternatives or components identified in Step 2:
- (i) Alternatives that clearly do not meet the requirements for a cleanup action in WAC [173-340-360](#), including alternatives for which costs are clearly disproportionate to benefits under WAC [173-340-360](#)(5);
 - (ii) Alternatives or components that are not technically possible at the site.
- (d) **Step 4: Evaluate remaining alternatives.** Conduct a detailed evaluation of each remaining cleanup action alternative to determine whether it meets the requirements in WAC [173-340-360](#) and conforms to the expectations in WAC [173-340-370](#). If necessary, conduct additional remedial investigations under WAC [173-340-350](#) to complete the evaluation, including any investigations needed to complete a terrestrial ecological evaluation;
- (e) **Step 5: Select preferred alternative.** Based on the detailed evaluation in Step 4, select a preferred cleanup action alternative that meets the requirements in WAC [173-340-360](#) and conforms, as appropriate, to the expectations in WAC [173-340-370](#).
- (f) **Step 6: Report results.** Report the results of the feasibility study in accordance with subsection (4) of this section. Include the following information in the report:
- (i) If the remedial investigation report is not combined with the feasibility study report, a summary of remedial investigation results, including:

- (A) The conceptual site model used to develop and evaluate cleanup action alternatives;
 - (B) The proposed cleanup level for each hazardous substance within each affected environmental medium at the site, and the basis for the cleanup level; and
 - (C) Maps, cross-sections, and calculations illustrating the location, estimated amount, and concentration distribution of hazardous substances above the proposed cleanup levels for each affected environmental medium at the site;
- (ii) Results of any additional investigations conducted after completing the remedial investigation report;
- (iii) Results of any treatability or pilot studies needed to develop or evaluate cleanup action alternatives;
- (iv) The cleanup goals identified in Step 1 of the feasibility study;
- (v) The cleanup action alternatives identified in Step 2 of the feasibility study. For each alternative, include:
 - (A) The cleanup action components relied on to clean up each affected environmental medium;
 - (B) For alternatives relying on a combination of cleanup action components to clean up an environmental medium, the proposed remediation levels and the basis for those levels;
 - (C) The proposed point of compliance for each hazardous substance within each affected environmental medium at the site, and the basis for any conditional points of compliance (see Part 7 of this chapter);
 - (D) The location and estimated mass of each hazardous substance to be removed or treated by the alternative and the estimated time frame in which removal or treatment will occur. Ecology may require or allow estimates of the volume of contaminated material in place of, or in addition to, estimates of the mass of hazardous substances; and
 - (E) The location, estimated mass, and projected concentration distribution of each hazardous substance remaining above proposed cleanup levels after implementing the alternative. Ecology may require or allow estimates of the volume of contaminated material in place of, or in addition to, estimates of the mass of hazardous substances;
- (vi) The cleanup action alternatives eliminated from further evaluation during the screening process in Step 3 of the feasibility study, and the basis for elimination;

- (vii) Documentation of the detailed evaluation process in Step 4 of the feasibility study, including how impacts on likely vulnerable populations and overburdened communities were considered in the evaluation, and the basis for eliminating any alternative from further evaluation;
- (viii) The preferred cleanup action alternative selected in Step 5 of the feasibility study, including:

 - (A) The basis for selecting the alternative and for any nonconformance to the expectations in WAC [173-340-370](#);
 - (B) Any local, state, or federal laws applicable to the alternative, including any known permits or approval conditions (see WAC [173-340-710](#));
 - (C) As appropriate, proposed indicator hazardous substances for the alternative (see WAC [173-340-703](#)); and
 - (D) Sufficient information about the alternative to enable ecology to conduct the evaluations and make the determinations required under chapter [43.21C](#) RCW, the State Environmental Policy Act, and chapter [197-11](#) WAC, the State Environmental Policy Act Rules;
- (ix) Documentation of the proper management and disposal of any waste materials generated as a result of the feasibility study in accordance with applicable state and federal laws; and
- (x) Any other information required by ecology.

WAC 173-340-355 Development of cleanup action alternatives that include remediation levels.

- (1) **Purpose.** A cleanup action often relies on a combination of cleanup action components to remediate an environmental medium. For example, to remediate soil, a cleanup action may rely on treatment of some soil contamination and containment of the remainder. The purpose of a remediation level is to specify when the various components are used as part of a cleanup action.
- (2) **Applicability.** Remediation levels must be established as part of a cleanup action if the cleanup action relies on a combination of cleanup action components to remediate a hazardous substance in an environmental medium.
- (3) **Types.** Remediation levels may be based on a concentration (e.g., all soil above a specified concentration will be treated), or other method of identification, such as the physical appearance or location of the contamination (e.g., all of the green sludge will be removed from the northwest quadrant of the site).
- (4) **Development.** Remediation levels must be developed and evaluated as part of a cleanup action alternative during the feasibility study conducted under WAC [173-340-351](#). Quantitative or qualitative methods may be used to develop remediation levels. The methods may include a human health or ecological risk assessment. The methods may also consider fate and transport issues. The methods may be simple or complex, as appropriate to the site. Where a quantitative risk assessment is used, see WAC [173-340-357](#).
- (5) **Selection.** The remediation levels selected as part of a cleanup action must be specified in the cleanup action plan under WAC [173-340-380](#)(5).
- (6) **Relationship to cleanup levels and cleanup standards.** Remediation levels are not the same as cleanup levels or cleanup standards.

 - (a) A cleanup level defines the concentration of a hazardous substance above which a contaminated environmental medium (such as soil) must be remediated in some manner (such as treatment, containment, or institutional controls). A remediation level, on the other hand, defines the concentration (or other method of identification) of a hazardous substance in an environmental medium at which a particular cleanup action component (such as soil treatment versus containment) will be used. Remediation levels, by definition, exceed cleanup levels.
 - (b) Cleanup levels must be established for every site. Remediation levels, on the other hand, must be established only if a cleanup action relies on a combination of cleanup action components to remediate an environmental medium.
 - (c) Cleanup actions, including those relying on a combination of cleanup action components to remediate an environmental medium, must meet each of the requirements in WAC [173-340-360](#), including compliance with cleanup standards. If a remedial action does not comply with cleanup standards, the remedial action is an interim action, not a cleanup action.

- (7) **Examples.** The following examples of cleanup actions that use remediation levels are for illustrative purposes only. All cleanup action alternatives in a feasibility study, including those using remediation levels, must be evaluated to determine whether they meet each of the requirements in WAC [173-340-360](#).
- (a) **Example of a site meeting soil cleanup levels at the point of compliance.** Assume the soil cleanup level for a hazardous substance at a site is 20 ppm. This means any soil exceeding 20 ppm at the applicable point of compliance must be remediated. Further assume the cleanup action consists of treating soil above 100 ppm and removing to an offsite landfill soil between 100 and 20 ppm. In this case, 100 ppm is a remediation level that defines which soil will be treated and which soil will be removed from the site. The cleanup action may be determined to comply with the cleanup standard because the 20 ppm soil cleanup level is met at the applicable point of compliance.
- (b) **Example of a site not meeting soil cleanup levels at the point of compliance.** Assume the soil cleanup level for a hazardous substance at a site is 20 ppm. This means any soil exceeding 20 ppm at the applicable point of compliance must be remediated. Further assume the cleanup action consists of treating soil above 100 ppm and containing soil between 100 and 20 ppm. The 100 ppm concentration is a remediation level that defines which soil will be treated and which soil will be contained at the site. Even though contamination above the 20 ppm cleanup level remains at the site, if the cleanup action meets the requirements specified in WAC [173-340-740\(6\)\(f\)](#) for soil containment actions, the cleanup action may be determined to comply with cleanup standards.
- (c) **Example of site meeting groundwater cleanup levels at the point of compliance.** Assume the groundwater cleanup level for a hazardous substance at a site is 500 ug/l and a conditional point of compliance is established at the property boundary. This means any groundwater exceeding 500 ug/l at the point of compliance must be remediated. Further assume the cleanup action consists of: Removing the source of the groundwater contamination (such as removing a leaking tank and associated soil contamination above the water table); extracting free product and any groundwater exceeding a concentration of 2,000 ug/l; and utilizing natural attenuation to restore the groundwater to 500 ug/l before it arrives at the property boundary. The 2,000 ug/l concentration is a remediation level that defines which groundwater will be actively treated and which groundwater will be naturally attenuated at the site. As long as the groundwater meets the 500 ug/l cleanup level at the conditional point of compliance, the cleanup action may be determined to comply with cleanup standards.
- (d) **Example of a site not meeting groundwater cleanup levels at the point of compliance.** Assume the groundwater cleanup level at a site is 5 ug/l and a conditional point of compliance is established at the property boundary. This means any groundwater exceeding 5 ug/l at the point of compliance must be remediated. Further assume the remedial action selected for the site consists of: Vapor extraction of the soil to nondetectable concentrations (to prevent further groundwater contamination); extraction and treatment of groundwater with concentrations in excess of 100 ug/l; and

installation of an air stripping system to treat groundwater at a water supply well beyond the property boundary to less than 5 ug/l. Further assume the groundwater cleanup level will not be met at the conditional point of compliance (the property boundary). The concentration of 100 ug/l is a remediation level that defines which groundwater will be treated on site. In this example, the remedial action is an interim action, not a cleanup action, because it does not comply with cleanup standards (that is, it does not achieve the 5 ug/l cleanup level at the conditional point of compliance).

WAC 173-340-357 Quantitative risk assessment of cleanup action alternatives.

- (1) **Purpose.** A cleanup action must protect human health and the environment, including likely vulnerable populations and overburdened communities (see WAC [173-340-360\(3\)\(a\)\(i\)](#)). A quantitative site-specific risk assessment may be used to help determine whether cleanup action alternatives, including those relying on engineered or institutional controls to limit exposure to contamination remaining at a site, protect human health and the environment. Other methods may be used in addition to, or instead of, a quantitative site-specific risk assessment to determine whether a cleanup action alternative is protective.
- (2) **Human health risk assessment.** A quantitative site-specific human health risk assessment may be used to help determine whether cleanup action alternatives, including those relying on engineered or institutional controls to limit exposure, protect human health. This subsection defines the framework for assessing cleanup action alternatives relying on engineered or institutional controls to limit exposure. References to Method C in this subsection apply to an environmental medium only if the medium for which a remediation level is being established qualifies for a Method C cleanup level under WAC [173-340-706](#).
- (a) **Reasonable maximum exposure.** Standard reasonable maximum exposures and corresponding Method B and C equations in WAC [173-340-720](#) through [173-340-750](#) may be modified as provided under WAC [173-340-708\(3\)\(d\)](#). For example, land uses other than residential and industrial may be used as the basis for an alternative reasonable maximum exposure scenario for the purpose of assessing the protectiveness of a cleanup action alternative that relies on engineered or institutional controls (such as containment) to limit exposure to contaminated soil.
- (b) **Exposure parameters.** Exposure parameters for the standard Method B and C equations in WAC [173-340-720](#) through [173-340-750](#) may be modified as provided in WAC [173-340-708\(10\)](#).
- (c) **Acceptable risk level.** The acceptable risk level used to establish a remediation level for a hazardous substance must be the same as that used to establish the cleanup level for the substance.
- (d) **Soil to groundwater pathway.** The methods specified in WAC [173-340-747](#) to develop soil concentrations that are protective of groundwater beneficial uses may also be used to help assess whether a cleanup action alternative that relies on engineered or institutional controls (such as soil containment) will protect groundwater.
- (e) **Burden of proof, new science, and quality of information.** Any modification of the default assumptions in the standard Method B and C equations, including modification of the standard reasonable maximum exposures and exposure parameters, or any modification of default assumptions or methods specified in WAC [173-340-747](#) requires compliance with WAC [173-340-702](#) (14), (15) and (16).
- (f) **Commercial gas station scenario.** At active commercial gas stations, where there are retail sales of gasoline or diesel, one of the following may be done to demonstrate when a cap is protective of the soil ingestion and dermal pathways:

- (i) Equations 740-3 and 740-5 may be modified by reducing the exposure frequency to 0.25. This exposure frequency is intended to be a conservative estimate of a child trespasser scenario at a commercial gas station where contaminated soil has been excavated and stockpiled or soil is otherwise accessible. To rely on this exposure frequency:
 - (A) The cleanup action must include institutional controls that prevent uses that could result in a higher level of exposure; and
 - (B) Other exposure pathways (e.g., soil vapors and soil to groundwater) must be assessed to determine whether they are protective; or
 - (ii) Equations 740-3 and 740-5 may be modified on a site-specific basis as described in WAC [173-340-740](#)(3)(c).
- (3) **Ecological risk assessment.** A quantitative site-specific ecological risk assessment may be used to help determine whether cleanup action alternatives, including those relying on engineered or institutional controls to limit exposure, protect the environment.

WAC 173-340-360 Cleanup action requirements.

- (1) Purpose.** This section specifies requirements for cleanup actions and the procedures for determining whether a cleanup action alternative meets those requirements.
- (2) Applicability.** A cleanup action at a contaminated site must comply with the requirements in this section, regardless of which administrative option in WAC [173-340-510](#) is used to conduct remedial action at the site.
 - (a) Sediment sites and sediment cleanup units.** For sites where there is a release or threatened release to sediment, a cleanup action must also comply with the applicable requirements in WAC [173-204-570](#).
 - (b) National priorities list sites.** For sites on the national priorities list, a cleanup action must also comply with applicable requirements under the federal cleanup law.
- (3) Requirements.** A cleanup action must meet all of the requirements in this subsection. When a cleanup action includes more than one cleanup action component, the overall cleanup action must meet the requirements in this subsection. Ecology recognizes that some of the requirements contain flexibility and require the use of professional judgment in determining how to apply them at a particular site.
 - (a) General requirements.** A cleanup action must:
 - (i)** Protect human health and the environment, including likely vulnerable populations and overburdened communities;
 - (ii)** Comply with cleanup standards (see Part 7 of this chapter);
 - (iii)** Comply with applicable state and federal laws (see WAC [173-340-710](#));
 - (iv)** Prevent or minimize present and future releases and migration of hazardous substances in the environment;
 - (v)** Provide resilience to climate change impacts that have a high likelihood of occurring and severely compromising its long-term effectiveness;
 - (vi)** Provide for compliance monitoring (see WAC [173-340-410](#) and Part 7 of this chapter);
 - (vii)** Not rely primarily on institutional controls and monitoring at a site, or portion thereof, if it is technically possible to implement a more permanent cleanup action;
 - (viii)** Not rely primarily on dilution and dispersion unless the incremental costs of any active remedial measures over the costs of dilution and dispersion grossly exceed the incremental degree of benefits of active remedial measures over the benefits of dilution and dispersion. Determine the benefits and costs using the criteria in subsection (5)(d) of this section;

- (ix) Provide for a reasonable restoration time frame (see subsection (4) of this section); and
 - (x) Use permanent solutions to the maximum extent practicable (see subsection (5) of this section).
- (b) **Action-specific requirements.** As applicable, a cleanup action must:
 - (i) Use remediation levels in accordance with WAC [173-340-355](#);
 - (ii) Use institutional controls in accordance with WAC [173-340-440](#);
 - (iii) Provide financial assurances in accordance with WAC [173-340-440](#)(11); and
 - (iv) Provide for periodic reviews in accordance with WAC [173-340-420](#)(2).
- (c) **Media-specific requirements.**
 - (i) A soil cleanup action must treat, remove, or contain contaminated soils located on properties:
 - (A) Where a school or child care center is located;
 - (B) That qualify as a residential area based on current use; or
 - (C) That qualify as a potential future residential area based on zoning, statutory and regulatory restrictions, comprehensive plans, historical use, adjacent land uses, and other relevant factors.
 - (ii) A groundwater cleanup action must be permanent (achieve groundwater cleanup levels at the standard point of compliance without further remedial action being required) if:
 - (A) Such an action is practicable; or
 - (B) Ecology determines such an action is in the public interest.
 - (iii) A nonpermanent groundwater cleanup action must:
 - (A) Treat or remove the source of groundwater contamination at sites where there are liquid wastes, areas contaminated with high concentrations of hazardous substances, highly mobile hazardous substances, or hazardous substances that cannot be reliably contained. This includes removal of free product consisting of petroleum and other light nonaqueous phase liquid (LNAPL) from the groundwater using normally accepted engineering practices. Source containment may be appropriate when the free product consists of a dense nonaqueous phase liquid (DNAPL) that cannot be recovered after reasonable efforts have been made; and
 - (B) Contain contaminated groundwater to the maximum extent practicable to prevent lateral and vertical expansion of the groundwater volume

affected by the hazardous substances and to prevent the migration of the hazardous substances. This includes barriers or hydraulic control through groundwater pumping, or both.

- (d) **Public concerns and tribal rights and interests.** For ecology-conducted or ecology-supervised remedial actions, ecology will consider the following when selecting a cleanup action:

- (i) Public concerns, including the concerns of likely vulnerable populations and overburdened communities, identified under WAC [173-340-600](#)(13) and (14); and
- (ii) Indian tribes' rights and interests identified under WAC [173-340-620](#).

(4) **Determining whether a cleanup action provides for a reasonable restoration time frame.**

- (a) **Purpose.** The restoration time frame is the period of time needed for a cleanup action to achieve cleanup levels at the point of compliance (see WAC [173-340-200](#)). This subsection specifies the requirements and procedures for determining whether a cleanup action alternative provides for a reasonable restoration time frame, as required under subsection (3)(a)(ix) of this section.

(b) **Applicability.**

- (i) **Whether evaluation required.** An evaluation of whether a cleanup action alternative provides a reasonable restoration time frame must be conducted unless a model remedy is selected as the cleanup action. The evaluation must be conducted regardless of which administrative option in WAC [173-340-510](#) is used to conduct remedial action at the site.

(ii) **Evaluation requirements.**

- (A) For restoration of environmental media other than sediment, the evaluation must be conducted in accordance with this subsection;
- (B) For restoration of sediment, the evaluation must be conducted in accordance with WAC [173-204-570](#)(5).

- (c) **Evaluation.** To determine whether a cleanup action alternative provides for a reasonable restoration time frame, the following factors must be considered at a minimum:

- (i) Potential risks posed by the site to human health and the environment, including likely vulnerable populations and overburdened communities;
- (ii) Practicability of achieving a shorter restoration time frame. A restoration time frame is not reasonable if an active remedial measure with a shorter restoration time frame is practicable;
- (iii) Long-term effectiveness of the alternative. A longer restoration time frame may be reasonable if the alternative has a greater degree of long-term effectiveness

than one that primarily relies on on-site or offsite disposal, isolation, or containment;

- (iv) Current use of the site, surrounding areas, and associated resources that are, or may be, affected by releases from the site;
- (v) Potential future use of the site, surrounding areas, and associated resources that are, or may be, affected by releases from the site;
- (vi) Availability of alternative water supplies;
- (vii) Likely effectiveness and reliability of institutional controls;
- (viii) Ability to control and monitor migration of hazardous substances from the site;
- (ix) Toxicity of the hazardous substances at the site;
- (x) Natural processes that reduce concentrations of hazardous substances and have been documented to occur at the site or under similar site conditions; and
- (xi) For ecology-conducted or ecology-supervised remedial actions, public concerns identified under WAC [173-340-600](#) (13) and (14) and Indian tribes' rights and interests identified under WAC [173-340-620](#).

(d) **Cleanup levels below area background concentrations.** At sites where area background concentrations, as defined in WAC [173-340-200](#), would result in recontamination of the site to levels that exceed cleanup levels:

- (i) The remedial action must achieve area background concentrations within a reasonable restoration time frame, as determined under (c) of this subsection;
- (ii) Cleaning up the site below area background concentrations may be delayed until the off-site sources of hazardous substances are controlled; and
- (iii) The remedial action is an interim action until cleanup levels are attained.

(e) **Cleanup levels below technically possible concentrations.** At sites where cleanup levels determined under Method C in WAC [173-340-706](#) are below concentrations that are technically possible to achieve:

- (i) The remedial action must achieve concentrations that are technically possible to achieve within a reasonable restoration time frame, as determined under (c) of this subsection; and
- (ii) The remedial action is an interim action until cleanup levels are attained.

(5) **Determining whether a cleanup action uses permanent solutions to the maximum extent practicable.**

(a) **Purpose.** This subsection specifies the requirements and procedures for determining whether a cleanup action uses permanent solutions to the maximum extent practicable,

as required under RCW [70A.305.030](#)(1) and subsection (3)(a)(x) of this section. A permanent cleanup action or permanent solution is defined in WAC [173-340-200](#).

- (b) **Applicability.** The evaluation required under this subsection must be conducted unless a permanent cleanup action alternative or a model remedy is selected as the cleanup action. The evaluation must be conducted regardless of which administrative option in WAC [173-340-510](#) is used to conduct the cleanup action.
- (c) **Procedure.** To determine which cleanup action alternative included in the feasibility study uses permanent solutions to the maximum extent practicable, do the following:

 - (i) **Step 1:** Determine the benefits and costs of each cleanup action alternative using the criteria in (d) of this subsection.

 - (A) The estimation and comparison of benefits and costs may be quantitative, but will often be qualitative and require the use of best professional judgment.
 - (B) On a site-specific basis, ecology may weight the criteria in (d) of this subsection and favor or disfavor qualitative benefit and cost estimates in the analysis.
 - (C) For ecology-conducted or ecology-supervised remedial actions, when determining or weighting the benefits in (d) of this subsection, ecology will also consider:

 - (I) Public concerns identified under WAC [173-340-600](#)(13) and (14); and
 - (II) Indian tribes' rights and interests identified under WAC [173-340-620](#).
 - (ii) **Step 2:** Rank the cleanup action alternatives by degree of permanence. To determine the relative permanence of an alternative, consider the definition of a permanent cleanup action in WAC [173-340-200](#) and the criteria in (d)(ii) of this subsection.
 - (iii) **Step 3:** Identify the initial baseline alternative for use in the disproportionate cost analysis in Step 4.

 - (A) If the feasibility study includes only one permanent cleanup action alternative, use that alternative as the initial baseline.
 - (B) If the feasibility study includes more than one permanent cleanup action alternative, determine which permanent cleanup action alternative is the most cost-effective (that is, the alternative with the lowest cost per degree of benefit) and use it as the initial baseline. Eliminate from further evaluation the less cost-effective permanent cleanup action alternatives.

- (C) If all permanent cleanup action alternatives are eliminated from evaluation in the feasibility study during the screening process in WAC [173-340-351](#)(6)(c), use the most permanent cleanup action alternative identified in Step 2 as the initial baseline.
- (iv) **Step 4:** Conduct a disproportionate cost analysis of the ranked list of cleanup action alternatives identified in Step 2. Use the cleanup action alternative identified in Step 3 as the initial baseline for the analysis.
 - (A) **Analysis.** To conduct the analysis, do the following:
 - (I) First, compare the costs and benefits of the baseline alternative with the costs and benefits of only the next most permanent alternative (not any of the other alternatives); and
 - (II) Second, determine whether the incremental costs of the baseline alternative over the next most permanent alternative are disproportionate to the incremental degree of benefits of the baseline alternative over the next most permanent alternative.
 - (B) **Decision.** Based on the results of the analysis, do the following:
 - (I) If the incremental costs are not disproportionate to the incremental degree of benefits, then the baseline alternative uses permanent solutions to the maximum extent practicable and the analysis under this subsection is complete.
 - (II) If the benefits of the two alternatives are the same or similar, then the lower cost alternative uses permanent solutions to the maximum extent practicable and the analysis under this subsection is complete.
 - (III) If the incremental costs are disproportionate to the incremental degree of benefits, then eliminate the baseline alternative from further analysis and make the next most permanent alternative the baseline for further analysis. Repeat Step 4. However, if the new baseline is the least permanent alternative on the ranked list of alternatives identified in Step 2, that alternative uses permanent solutions to the maximum extent practicable and the analysis under this subsection is complete.
- (d) **Criteria.** When conducting a disproportionate cost analysis under this subsection, use the following criteria to evaluate and compare the costs and benefits of each cleanup action alternative:
 - (i) **Protectiveness.** The degree to which the alternative protects human health and the environment, including likely vulnerable populations and overburdened communities. When assessing protectiveness, consider at least the following:

- (A) The degree to which the alternative reduces existing risks;
 - (B) The time required for the alternative to reduce risks at the site and attain cleanup standards;
 - (C) The on-site and offsite risks remaining after implementing the alternative; and
 - (D) Improvement of the overall environmental quality;
- (ii) **Permanence.** The degree to which the alternative permanently reduces the toxicity, mobility, or mass of hazardous substances, including:
 - (A) The adequacy of the alternative in destroying the hazardous substances;
 - (B) The reduction or elimination of hazardous substance releases and sources of releases;
 - (C) The degree of irreversibility of waste treatment process; and
 - (D) The characteristics and quantity of treatment residuals generated;
- (iii) **Effectiveness over the long term.** The degree to which the alternative is likely to be effective over the long term, including for likely vulnerable populations and overburdened communities.
 - (A) **Factors.** When assessing the long-term effectiveness of the alternative, consider at least the following:
 - (I) The degree of certainty that the alternative will be successful;
 - (II) The reliability of the alternative during the period of time hazardous substances are expected to remain on-site at concentrations that exceed cleanup levels;
 - (III) The resilience of the alternative to climate change impacts;
 - (IV) The magnitude of residual risk with the alternative in place; and
 - (V) The effectiveness of controls required to manage treatment residues or remaining wastes.
 - (B) **Hierarchy.** Except as provided for sediment sites and cleanup units in WAC [173-204-570\(4\)](#), when assessing the relative degree of long-term effectiveness of cleanup action components, the following types of components may be used as a guide, in descending order:
 - (I) Reuse or recycling;
 - (II) Destruction or detoxification;
 - (III) Immobilization or solidification;

- (IV) On-site or offsite disposal in an engineered, lined and monitored facility;
 - (V) On-site isolation or containment with attendant engineering controls; and
 - (VI) Institutional controls and monitoring;
- (iv) **Management of implementation risks.** The risks to human health and the environment, including likely vulnerable populations and overburdened communities, associated with the alternative during construction and implementation, and the effectiveness of the alternative to manage such risks;
- (v) **Technical and administrative implementability.** The ability to implement the alternative, including consideration of:
 - (A) The technical difficulty of designing, constructing, and otherwise implementing the alternative in a reliable and effective manner, regardless of cost;
 - (B) The availability of necessary offsite facilities, services, and materials;
 - (C) Administrative and regulatory requirements;
 - (D) Scheduling, size, and complexity;
 - (E) Monitoring requirements;
 - (F) Access for construction operations and monitoring; and
 - (G) Integration with existing facility operations and other current or potential remedial actions; and
- (vi) **Costs.** The costs of remedial actions necessary to implement the alternative, including:
 - (A) **Construction costs**, such as preconstruction engineering design and permitting, physical construction (including labor, equipment, materials, and contingencies), waste management and disposal, compliance monitoring during construction (including sampling and analysis), construction management, establishment of institutional controls, regulatory oversight, and quality assurance and quality control; and
 - (B) **Postconstruction costs**, such as operation and maintenance activities necessary to maintain the effectiveness of a constructed cleanup action component, waste management and disposal, replacement or repair of equipment (including labor, equipment, and materials), permit renewal, compliance monitoring (including sampling and analysis), maintaining institutional controls, financial assurances, periodic reviews, postconstruction management, and regulatory oversight.

- (I) **Design life.** Estimate the design life of cleanup action components, including engineered controls. If the period of time in which a component is needed exceeds the design life of the component, include the cost of replacing or repairing the component in the cost estimate.
- (II) **Future costs.** Discount postconstruction costs using present worth analysis doing the following:
 - Estimate future costs using constant-year dollars; and
 - Discount future costs using the current U.S. Treasury real interest rate for bonds of comparable maturity to the period of analysis. If project costs exceed 30 years, use the current U.S. Treasury 30-year real interest rate.

WAC 173-340-370 Cleanup action expectations.

Ecology has the following expectations for cleanup actions. The expectations represent the likely results of the cleanup action selection process described in WAC [173-340-350](#) through [173-340-390](#). Ecology recognizes that conformance with the expectations may not be appropriate at some sites. Selecting a cleanup action conforming to the expectations is not a substitute for conducting a feasibility study. The expectations must be considered when evaluating cleanup action alternatives in the feasibility study. Any nonconformance of the preferred cleanup action alternative to the expectations must be documented and explained in the feasibility study report.

- (1) Ecology expects that treatment technologies will be emphasized at sites containing liquid wastes, areas contaminated with high concentrations of hazardous substances, highly mobile materials, and/or discrete areas of hazardous substances that lend themselves to treatment.
- (2) To minimize the need for long-term management of contaminated materials, ecology expects that all hazardous substances will be destroyed, detoxified, and/or removed to concentrations below cleanup levels throughout sites containing small volumes of hazardous substances.
- (3) Ecology recognizes the need to use engineering controls, such as containment, for sites or portions of sites that contain large volumes of materials with relatively low levels of hazardous substances where treatment is impracticable.
- (4) To minimize the potential for migration of hazardous substances, ecology expects that active measures will be taken to prevent precipitation and subsequent runoff from coming into contact with contaminated soils and waste materials. When such measures are impracticable, such as during active cleanup, ecology expects that site runoff will be contained and treated prior to release from the site.
- (5) Ecology expects that when hazardous substances remain on-site at concentrations exceeding cleanup levels, those hazardous substances will be consolidated to the maximum extent practicable where needed to minimize the potential for direct contact and migration of hazardous substances.
- (6) Ecology expects that active measures will be taken to prevent/minimize releases to surface water or sediment via surface runoff and groundwater discharges in excess of cleanup levels. Ecology expects that dilution will not be the sole method for demonstrating compliance with cleanup standards in these instances.
- (7) Ecology expects that natural attenuation of hazardous substances may be appropriate at sites where:
 - (a) Source control (including removal and/or treatment of hazardous substances) has been conducted to the maximum extent practicable;
 - (b) Leaving contaminants on-site during the restoration time frame does not pose an unacceptable threat to human health or the environment;
 - (c) There is evidence that natural biodegradation or chemical degradation is occurring and will continue to occur at a reasonable rate at the site; and

- (d)** Appropriate monitoring requirements are conducted to ensure that the natural attenuation process is taking place and that human health and the environment are protected.
- (8)** Ecology expects that cleanup actions conducted under this chapter will not result in a significantly greater overall threat to human health and the environment from hazardous substances, either at the site being cleaned up or at another site involved with the cleanup action, than other cleanup action alternatives.

WAC 173-340-380 Cleanup action plan.

- (1) Purpose.** The purpose of a cleanup action plan is to document the selected cleanup action and to specify the cleanup standards and other requirements the cleanup action must meet.
- (2) Applicability.**
 - (a) Whether required.** A cleanup action must be selected and a cleanup action plan must be developed regardless of which administrative option in WAC [173-340-510](#) is used to conduct remedial action at the site.
 - (b) Requirements.** A cleanup action plan must comply with the requirements in this section. For sites where there is a release or threatened release to sediment, a cleanup action plan must also comply with the applicable requirements in WAC [173-204-575](#).
- (3) Timing.** Except as otherwise directed by ecology, a remedial investigation/feasibility study must be completed before cleanup standards are established and a cleanup action is selected. An emergency remedial action or an interim action may be conducted before a cleanup action is selected.
- (4) Administrative options and requirements.** A cleanup action may be selected and a cleanup action plan may be developed under any of the administrative options for remedial action described in WAC [173-340-510](#). Reporting and public participation requirements depend on the administrative option used to conduct remedial action.
 - (a) Ecology-conducted or ecology-supervised remedial actions.** For an ecology-conducted or ecology-supervised cleanup action, ecology will:
 - (i)** Select the cleanup action and establish the cleanup standards and other requirements that the cleanup action must meet;
 - (ii)** Issue a draft cleanup action plan that includes the information required in subsection (5) of this section. For routine actions, ecology may include the draft cleanup action plan in an order or decree instead of in a separate document;
 - (iii)** Provide or require public notice of the draft cleanup action plan in accordance with WAC [173-340-600](#)(14);
 - (iv)** After review and consideration of public comments, issue a final cleanup action plan. For routine actions, ecology may include the final cleanup action plan in an order or decree instead of in a separate document; and
 - (v)** Provide notice of the final cleanup action plan in accordance with WAC [173-340-600](#)(14).
 - (b) Independent remedial actions.** Independent cleanup action plans must be reported to ecology in accordance with WAC [173-340-515](#). Plans must include, as appropriate, the information specified in subsection (5) of this section.
- (5) Content of cleanup action plan.** A cleanup action plan must include the following information and provide a level of detail commensurate with the complexity of the site and cleanup action:

- (a) A general description of the cleanup action selected in accordance with WAC [173-340-350](#) through [173-340-390](#), including any model remedy;
 - (b) A summary of the rationale for selecting the cleanup action, including any model remedy;
 - (c) A summary of how impacts on likely vulnerable populations and overburdened communities were considered when selecting the cleanup action and developing the plan;
 - (d) For ecology-conducted or ecology-supervised remedial actions, a brief summary of how ecology considered the following when selecting the cleanup action:
 - (i) Public concerns identified under WAC [173-340-600](#)(13) and (14); and
 - (ii) Indian tribes' rights and interests identified under WAC [173-340-620](#);
 - (e) A brief summary of the other cleanup action alternatives evaluated in the remedial investigation/feasibility study;
 - (f) Cleanup standards and, where applicable, remediation levels, for each hazardous substance and for each environmental medium of concern at the site;
 - (g) Any changes to the default assumptions or reasonable maximum exposure scenarios used to establish cleanup standards or to demonstrate the protectiveness of the cleanup action;
 - (h) The schedule for implementing the cleanup action plan including, if known, the restoration time frame;
 - (i) Any institutional controls required as part of the cleanup action;
 - (j) Any applicable state and federal laws for the cleanup action known at this step in the cleanup process. This does not preclude subsequent identification of applicable state and federal laws;
 - (k) A preliminary determination by ecology that the cleanup action will comply with WAC [173-340-360](#); and
 - (l) If the cleanup action involves on-site containment, specification of the types, concentrations, and estimated mass of hazardous substances remaining on site and the measures that will be used to prevent migration of and exposure to the substances. Ecology may require or allow estimates of the volume of contaminated material in place of, or in addition to, estimates of the mass of hazardous substances.
- (6) **National priorities list sites.** For sites on the national priorities list, ecology may use a record of decision or an order or consent decree prepared under the federal cleanup law to meet the requirements of this section, provided that:
- (a) The cleanup action meets the requirements in WAC [173-340-360](#);

- (b)** The state concurs with the cleanup action; and
- (c)** The public was provided an opportunity to comment on the cleanup action.

WAC 173-340-390 Model remedies.

- (1) **Purpose.** The purpose of model remedies is to streamline and accelerate the selection of a cleanup action for routine types of cleanup projects at sites with common features and lower risk to human health and the environment.
- (2) **Development of model remedies.** Ecology may establish model remedies for common categories of sites, types of hazardous substances, types of media, and geographic areas. When establishing a model remedy, ecology will:

 - (a) Identify the applicability of the model remedy for use at a site, the site characterization required under WAC [173-340-350](#) to select the model remedy, and the compliance monitoring required under WAC [173-340-410](#) to implement the model remedy;
 - (b) Describe how the model remedy meets the cleanup standards established under Part 7 of this chapter and the requirements for cleanup actions in WAC [173-340-360](#); and
 - (c) Provide the public with notice and an opportunity to comment on the proposed model remedy and the conditions under which it may be used at a site. The public comment period must be at least 30 days.
- (3) **Soliciting proposals.** When developing model remedies, ecology will solicit and consider proposals from qualified persons. The proposals must, in addition to describing the model remedy, provide the information required under subsection (2)(a) and (b) of this section.
- (4) **Selection.** A model remedy may be selected as a cleanup action, or as a component of a cleanup action, at a site without conducting a feasibility study under WAC [173-340-351](#), provided that:

 - (a) The site meets the conditions for using the model remedy identified by ecology under subsection (2)(a) of this section. To make this demonstration, sufficient information must be collected and documented during the remedial investigation (see WAC [173-340-350](#)(6)(j)(ii) and (5)(f)(ii) and (g)(vii)); and
 - (b) For ecology-conducted and ecology-supervised remedial actions, ecology provides or requires public notice of the proposed use of the model remedy in the draft cleanup action plan under WAC [173-340-380](#).

Part 4 – Site Cleanup and Monitoring

WAC 173-340-400 Cleanup action implementation.

- (1) **Purpose.** Unless otherwise directed by the department, cleanup actions shall comply with this section except for emergencies or interim actions. The purpose of this section is to ensure that the cleanup action is designed, constructed, and operated in a manner that is consistent with:

 - (a) The cleanup action plan;
 - (b) Accepted engineering practices; and
 - (c) The requirements specified in WAC [173-340-360](#).
- (2) **Administrative options.** A cleanup action may be conducted under any of the administrative options for remedial action described in WAC [173-340-510](#).
- (3) **Public participation.** During cleanup action implementation, public participation shall be accomplished in a manner consistent with the requirements of WAC [173-340-600](#).
- (4) **Plans describing the cleanup action.** Design, construction, and operation of the cleanup action shall be consistent with the purposes of this section and shall consider relevant information provided by the remedial investigation/feasibility study. For most cleanups, to ensure this is done it will be necessary to prepare the engineering documents described in this section. The scope and level of detail in these documents may vary from site to site depending on the site-specific conditions and nature and complexity of the proposed cleanup action. In many cases, such as routine cleanups and cleanups at leaking underground storage tanks, it is appropriate to combine the information in these various documents into one report to avoid unnecessary duplication. Where the information is contained in other documents it may be appropriate to incorporate those documents by reference to avoid duplication. Any document prepared in order to implement a cleanup may be used to satisfy these requirements provided they contain the required information. In addition, for facilities on the national priorities list the plans prepared for the cleanup action shall also comply with federal requirements.

 - (a) **Engineering design report.** The engineering design report shall include sufficient information for the development and review of construction plans and specifications. It shall document engineering concepts and design criteria used for design of the cleanup action. The following information shall be included in the engineering design report, as appropriate:
 - (i) Goals of the cleanup action including specific cleanup or performance requirements;
 - (ii) General information on the facility including a summary of information in the remedial investigation/feasibility study updated as necessary to reflect the current conditions;
 - (iii) Identification of who will own, operate, and maintain the cleanup action during and following construction;
 - (iv) Facility maps showing existing site conditions and proposed location of the cleanup action;

- (v) Characteristics, quantity, and location of materials to be treated or otherwise managed, including groundwater containing hazardous substances;
- (vi) A schedule for final design and construction;
- (vii) A description and conceptual plan of the actions, treatment units, facilities, and processes required to implement the cleanup action including flow diagrams;
- (viii) Engineering justification for design and operation parameters, including:
 - (A) Design criteria, assumptions and calculations for all components of the cleanup action;
 - (B) Expected treatment, destruction, immobilization, or containment efficiencies and documentation on how that degree of effectiveness is determined; and
 - (C) Demonstration that the cleanup action will achieve compliance with cleanup requirements by citing pilot or treatability test data, results from similar operations, or scientific evidence from the literature;
- (ix) Design features for control of hazardous materials spills and accidental discharges (for example, containment structures, leak detection devices, run-on and runoff controls);
- (x) Design features to assure long-term safety of workers and local residences (for example, hazardous substances monitoring devices, pressure valves, bypass systems, safety cutoffs);
- (xi) A discussion of methods for management or disposal of any treatment residual and other waste materials containing hazardous substances generated as a result of the cleanup action;
- (xii) Facility specific characteristics that may affect design, construction, or operation of the selected cleanup action, including:
 - (A) Relationship of the proposed cleanup action to existing facility operations;
 - (B) Probability of flooding, probability of seismic activity, temperature extremes, local planning and development issues; and
 - (C) Soil characteristics and groundwater system characteristics;
- (xiii) A general description of construction testing that will be used to demonstrate adequate quality control;
- (xiv) A general description of compliance monitoring that will be performed during and after construction to meet the requirements of WAC [173-340-410](#);

- (xv) A general description of construction procedures proposed to assure that the safety and health requirements of WAC [173-340-810](#) are met;
 - (xvi) Any information not provided in the remedial investigation/feasibility study needed to fulfill the applicable requirements of the State Environmental Policy Act (chapter [43.21C](#) RCW);
 - (xvii) Any additional information needed to address the applicable state, federal and local requirements including the substantive requirements for any exempted permits; and property access issues which need to be resolved to implement the cleanup action;
 - (xviii) For sites requiring financial assurance and where not already incorporated into the order or decree or other previously submitted document, preliminary cost calculations and financial information describing the basis for the amount and form of financial assurance and, a draft financial assurance document;
 - (xix) For sites using institutional controls as part of the cleanup action and where not already incorporated into the order or decree or other previously submitted documents, copies of draft restrictive covenants and/or other draft documents establishing these institutional controls; and
 - (xx) Other information as required by the department.
- (b) **Construction plans and specifications.** Construction plans and specifications shall detail the cleanup actions to be performed. The plans and specifications shall be prepared in conformance with currently accepted engineering practices and techniques and shall include the following information as applicable:
- (i) A general description of the work to be performed and a summary of the engineering design criteria from the engineering design report;
 - (ii) General location map and existing facility conditions map;
 - (iii) A copy of any permits and approvals;
 - (iv) Detailed plans, procedures and material specifications necessary for construction of the cleanup action;
 - (v) Specific quality control tests to be performed to document the construction, including specifications for the testing or reference to specific testing methods, frequency of testing, acceptable results, and other documentation methods;
 - (vi) Startup procedures and criteria to demonstrate the cleanup action is prepared for routine operation;
 - (vii) Additional information to address applicable state, federal, and local requirements including the substantive requirements for any exempted permits;

- (viii) A compliance monitoring plan prepared under WAC [173-340-410](#) describing monitoring to be performed during construction, and a sampling and analysis plan meeting the requirements of WAC [173-340-820](#);
 - (ix) Provisions to assure safety and health requirements of WAC [173-340-810](#) are met;
 - (x) An inadvertent discovery plan meeting the requirements in WAC [173-340-815](#); and
 - (xi) Other information as required by the department.
- (c) **Operation and maintenance plan.** An operation and maintenance plan that presents technical guidance and regulatory requirements to assure effective operations under both normal and emergency conditions. The operation and maintenance plan shall include the following elements, as appropriate:
 - (i) Name and phone number of the responsible individuals;
 - (ii) Process description and operating principles;
 - (iii) Design criteria and operating parameters and limits;
 - (iv) General operating procedures, including startup, normal operations, operation at less than design loading, shutdown, and emergency or contingency procedures;
 - (v) A discussion of the detailed operation of individual treatment units, including a description of various controls, recommended operating parameters, safety features, and any other relevant information;
 - (vi) Procedures and sample forms for collection and management of operating and maintenance records;
 - (vii) Spare part inventory, addresses of suppliers of spare parts, equipment warranties, and appropriate equipment catalogues;
 - (viii) Equipment maintenance schedules incorporating manufacturers recommendations;
 - (ix) Contingency procedures for spills, releases, and personnel accidents;
 - (x) A compliance monitoring plan prepared under WAC [173-340-410](#) describing monitoring to be performed during operation and maintenance, and a sampling and analysis plan meeting the requirements of WAC [173-340-820](#);
 - (xi) Description of procedures which ensure that the safety and health requirements of WAC [173-340-810](#) are met, including specification of contaminant action levels and contingency plans, as appropriate;
 - (xii) An inadvertent discovery plan meeting the requirements in WAC [173-340-815](#);

- (xiii) Procedures for the maintenance of the facility after completion of the cleanup action, including provisions for removal of unneeded appurtenances, and the maintenance of covers, caps, containment structures, and monitoring devices; and
 - (xiv) Other information as required by the department.
- (5) **Permits.** Permits and approvals and any substantive requirements for exempted permits, if required for construction or to otherwise implement the cleanup action, shall be identified and where possible, resolved before, or during, the design phase to avoid delays during construction and implementation of the cleanup action.
- (6) **Construction.** Construction of the cleanup action shall be conducted in accordance with the construction plans and specifications, and other plans prepared under this section.
 - (a) **Department inspections.**
 - (i) The department may perform site inspections and construction oversight. The department may require that construction activities be halted at a site if construction or any supporting activities are not consistent with approved plans; are not in compliance with environmental regulations or accepted construction procedures; or endanger human health or the environment.
 - (ii) The department may conduct a formal inspection of the site following construction and an initial operational shake down period to ensure satisfactory completion of the construction. If such an inspection is performed, the construction documentation report and engineer's opinion specified in (b)(ii) of this subsection shall be available before the inspection.
 - (b) **Construction documentation.**
 - (i) Except as provided for in (b)(iii) of this subsection, all aspects of construction shall be performed under the oversight of a professional engineer registered in the state of Washington or a qualified technician under the direct supervision of a professional engineer registered in the state of Washington or as otherwise provided for in RCW [18.43.130](#). During construction, detailed records shall be kept of all aspects of the work performed including construction techniques and materials used, items installed, and tests and measurements performed.
 - (ii) **As built reports.** At the completion of construction the engineer responsible for the oversight of construction shall prepare as built drawings and a report documenting all aspects of facility construction. The report shall also contain an opinion from the engineer, based on testing results and inspections, as to whether the cleanup action has been constructed in substantial compliance with the plans and specifications and related documents.
 - (iii) For leaking underground storage tanks, the construction oversight and documentation report may be conducted by an underground storage tank provider certified under chapter [173-360A](#) WAC. Removal of above ground

abandoned drums, tanks and similar above ground containers and associated minor soil contamination may be overseen and documented by an experienced environmental professional. In other appropriate cases the department may authorize departure from the requirements of this subsection.

- (c) **Financial assurance and institutional control documentation.** As part of the as-built documentation for the site cleanup, where the following information has not already been submitted under an order or decree or as part of another previously submitted document, the following information shall be included in the as-built report:
 - (i) For sites requiring financial assurance, a copy of the financial assurance document and any procedures for periodic adjustment to the value of the financial assurance mechanism;
 - (ii) For sites using institutional controls as part of the cleanup action, copies of recorded deed restrictions (with proof of recording) and other documents establishing these institutional controls.
 - (d) **Plan modifications.** Changes in the design or construction of the cleanup action performed under an order or decree shall be approved by the department.
- (7) **Public participation.**
 - (a) For an ecology-conducted remedial action, the department will provide public notice of an engineering design report in accordance with WAC [173-340-600](#)(15)(a).
 - (b) For an ecology-conducted or an ecology-supervised remedial action, the department will provide or require public notice of any plan prepared under this section that represents a substantial change from the cleanup action plan in accordance with WAC [173-340-600](#)(15)(b).
- (8) **Plans and reports.** Plans or reports prepared under this section and under an order or decree shall be submitted to the department for review and approval. For independent remedial actions, the plans and reports shall be submitted as required under WAC [173-340-515](#).
- (9) **Requirements for managing waste generated by site cleanup.** Any waste contaminated by a hazardous substance generated during cleanup activities and requiring offsite treatment, storage or disposal, shall be transported to a facility permitted or approved to handle these wastes.

WAC 173-340-410 Compliance monitoring.

- (1) **Purpose.** There are three types of compliance monitoring: Protection, performance, and confirmation monitoring. The purposes of these three types of compliance monitoring and evaluation of the data are to:
- (a) **Protection monitoring.** Confirm that human health and the environment are adequately protected during construction and the operation and maintenance period of an interim action or cleanup action as described in the health and safety plan;
 - (b) **Performance monitoring.** Confirm that the interim action or cleanup action has attained cleanup standards and, if appropriate, remediation levels or other performance standards such as construction quality control measurements or monitoring necessary to demonstrate compliance with a permit or, where a permit exemption applies, the substantive requirements of other laws;
 - (c) **Confirmation monitoring.** Confirm the long-term effectiveness of the interim action or cleanup action once cleanup standards and, if appropriate, remediation levels or other performance standards have been attained.
- (2) **General requirements.** Compliance monitoring shall be required for all cleanup actions, and may be required for interim and emergency actions conducted under this chapter. Unless otherwise directed by the department, a compliance monitoring plan shall be prepared.

Plans prepared under this section and under an order or decree shall be submitted to the department for review and approval. Protection monitoring may be addressed in the health and safety plan. Performance and confirmation monitoring may be addressed in separate plans or may be combined with other plans or submittals, such as those in WAC [173-340-400](#) and [173-340-820](#).

- (3) **Contents of a monitoring plan.** Compliance monitoring plans may include monitoring for chemical constituents, biological testing, and physical parameters as appropriate for the site. Where the cleanup action includes engineered controls or institutional controls, the monitoring may need to include not only measurements but also documentation of observations on the performance of these controls. Long-term monitoring shall be required if on-site disposal, isolation, or containment is the selected cleanup action for a site or a portion of a site. Such measures shall be required until residual hazardous substance concentrations no longer exceed site cleanup levels established under Part 7 of this chapter. Compliance monitoring plans shall be specific for the media being tested and shall contain the following elements:
- (a) A sampling and analysis plan meeting the requirements of WAC [173-340-820](#) which shall explain in the statement of objectives how the purposes of subsection (1) of this section are met;
 - (b) Data analysis and evaluation procedures used, to demonstrate and confirm compliance and justification for these procedures, including:
 - (i) A description of any statistical method to be employed; or

- (ii)** If sufficient data is not available before writing the plan to propose a reliable statistical method to demonstrate and confirm compliance, a contingency plan proposing one or more reliable statistical methods to demonstrate and confirm compliance, and the conditions under which the methods would be used at the facility; and
- (c)** Other information as required by the department.

WAC 173-340-420 Periodic review.

- (1) **Purpose.** A periodic review consists of a review by the department of post-cleanup site conditions and monitoring data to assure that human health and the environment are being protected.
- (2) **Applicability.** The department shall conduct periodic reviews of a site whenever the department conducts a cleanup action; whenever the department approves a cleanup action under an order, agreed order or consent decree; or, as resources permit, whenever the department issues a no further action opinion; and one of the following conditions exists, at the site:

 - (a) Where an institutional control and/or financial assurance is required as part of the cleanup action;
 - (b) Where the cleanup level is based on a practical quantitation limit as provided for under WAC [173-340-707](#); and
 - (c) Where, in the department's judgment, modifications to the default equations or assumptions using site-specific information would significantly increase the concentration of hazardous substances remaining at the site after cleanup or the uncertainty in the ecological evaluation or the reliability of the cleanup action is such that additional review is necessary to assure long-term protection of human health and the environment.
- (3) **General requirements.** If a periodic review is required under subsection (2) of this section, a review shall be conducted by the department at least every five years after the initiation of a cleanup action. The department may require potentially liable persons to submit information required by the department to conduct a periodic review.
- (4) **Review criteria.** When evaluating whether human health and the environment are being protected, the factors the department shall consider include:

 - (a) The effectiveness of ongoing or completed cleanup actions, including the effectiveness of engineered controls and institutional controls in limiting exposure to hazardous substances remaining at the site;
 - (b) New scientific information for individual hazardous substances or mixtures present at the site;
 - (c) New applicable state and federal laws for hazardous substances present at the site;
 - (d) Current and projected site and resource uses;
 - (e) The availability and practicability of more permanent remedies; and
 - (f) The availability of improved analytical techniques to evaluate compliance with cleanup levels.

(5) Public participation or notification.

- (a)** For an ecology-conducted or an ecology-supervised remedial action, the department will:
- (i)** Provide public notice of a draft periodic review report in accordance with WAC [173-340-600](#)(18); and
 - (ii)** Notify all potentially liable persons known to the department of the results of the periodic review.
- (b)** For an independent remedial action, the department will notify the public of a periodic review report in accordance with WAC [173-340-600](#)(20).

(6) Determination of whether amendment of the cleanup action plan required. For an ecology-conducted or an ecology-supervised remedial action, when the department determines that substantial changes in the cleanup action are necessary to protect human health and the environment at the site, a revised cleanup action plan shall be prepared. The department shall provide or require public notice of the draft cleanup action plan in accordance with WAC [173-340-380](#) and [173-340-600](#)(14).

(7) Determination of whether future periodic reviews required. In conducting a periodic review under this section, the department shall determine whether additional reviews are necessary, taking into consideration the factors in subsection (4) of this section. Sites with institutional controls shall remain subject to periodic reviews as long as the institutional controls are required under this chapter.

WAC 173-340-430 Interim actions.

- (1) **Purpose.** An interim action is distinguished from a cleanup action in that an interim action only partially addresses the cleanup of a site. (Note: An interim action may constitute the cleanup action for a site if the interim action is subsequently shown to comply with WAC [173-340-350](#) through [173-340-390](#).) An interim action is:

- (a) A remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance at a facility;
- (b) A remedial action that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed; or
- (c) A remedial action needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action.

Example. A site is identified where oil-based wood preservative has leaked from a tank and is puddled on the ground and is floating on the water table. Runoff from adjacent properties passes through the site. Neighborhood children have been seen on the site. In this case, several interim actions would be appropriate before fully defining the extent of the distribution of hazardous substances at the site and selecting a cleanup action. These interim actions might consist of removing the tank, fencing the site, rerouting runoff, and removing the product puddled on the ground and floating on the water table. Further studies would then determine what additional soil and groundwater cleanup would be needed.

- (2) **General requirements.** Interim actions may:

- (a) Achieve cleanup standards for a portion of the site;
- (b) Provide a partial cleanup, that is, clean up hazardous substances from all or part of the site, but not achieve cleanup standards; or
- (c) Provide a partial cleanup of hazardous substances and not achieve cleanup standards, but provide information on how to achieve cleanup standards for a cleanup. For example, demonstration of an unproven cleanup technology.

- (3) **Relationship to the cleanup action.**

- (a) If the cleanup action is known, the interim action shall be consistent with the cleanup action.
- (b) If the cleanup action is not known, the interim action shall not foreclose reasonable alternatives for the cleanup action. This is not meant to preclude the destruction or removal of hazardous substances.

- (4) **Timing.**

- (a) Interim actions may occur anytime during the cleanup process. Interim actions shall not be used to delay or supplant the cleanup process. An interim action may be done before or in conjunction with a site hazard assessment and hazard ranking. However, sufficient

technical information must be available regarding the facility to ensure the interim action is appropriate and warranted.

- (b) Interim actions shall be followed by additional remedial actions unless compliance with cleanup standards has been confirmed at the site.
 - (c) The department shall set appropriate deadlines commensurate with the actions taken for completion of the interim action.
- (5) **Administrative options.** Interim cleanup actions may be conducted under any of the administrative options for remedial action described in WAC [173-340-510](#)
- (6) **Public participation or notification.**
 - (a) For an ecology-conducted or an ecology-supervised remedial action, the department will provide or require public notice of a draft interim action plan prepared under this section in accordance with WAC [173-340-600](#)(18).
 - (b) For an independent remedial action, the department will notify the public of an interim action report in accordance with WAC [173-340-600](#)(20).
- (7) **Submittal requirements.** Unless otherwise directed by the department and except for independent remedial actions, emergency remedial actions, and underground storage tank releases being addressed under WAC [173-340-450](#), a report shall be prepared before conducting an interim action. Reports prepared under an order or decree shall be submitted to the department for review and approval. Reports for independent remedial actions shall be submitted as required by WAC [173-340-515](#). Reports shall be of a scope and detail commensurate with the work performed and site-specific characteristics, and shall include, as appropriate:
 - (a) A description of the interim action and how it will meet the criteria identified in subsections (1), (2) and (3) of this section;
 - (b) Information from the applicable subsections of the remedial investigation/feasibility study of WAC [173-340-350](#) and [173-340-351](#), including at a minimum:
 - (i) A description of existing site conditions and a summary of all available data related to the interim action; and
 - (ii) Alternative interim actions considered and an explanation why the proposed alternative was selected;
 - (c) Information from the applicable subsections of the design and construction requirements of WAC [173-340-400](#); and
 - (d) A compliance monitoring plan meeting the applicable requirements of WAC [173-340-410](#);
 - (e) A health and safety plan meeting the requirements of WAC [173-340-810](#);
 - (f) An inadvertent discovery plan meeting the requirements in WAC [173-340-815](#); and

- (g) A sampling and analysis plan meeting the requirements of WAC [173-340-820](#).
- (8) **Construction.** Construction of the interim action shall be in conformance with WAC [173-340-400](#) (7).

WAC 173-340-440 Institutional controls.

- (1) **Purpose.** Institutional controls are measures undertaken to limit or prohibit activities that may interfere with the integrity of an interim action or cleanup action or that may result in exposure to hazardous substances at a site. Institutional controls may include:
- (a) Physical measures such as fences;
 - (b) Use restrictions such as limitations on the use of property or resources; or requirements that cleanup action occur if existing structures or pavement are disturbed or removed;
 - (c) Maintenance requirements for engineered controls such as the inspection and repair of monitoring wells, treatment systems, caps or groundwater barrier systems;
 - (d) Educational programs such as signs, postings, public notices, health advisories, mailings, and similar measures that educate the public and/or employees about site contamination and ways to limit exposure; and
 - (e) Financial assurances (see subsection (11) of this section).
- (2) **Relationship to engineered controls.** The term institutional controls refers to nonengineered measures while the term engineered controls means containment and/or treatment systems that are designed and constructed to prevent or limit the movement of, or the exposure to, hazardous substances. See the definition of engineered controls in WAC [173-340-200](#) for examples of engineered controls.
- (3) **Applicability.** This section applies to remedial actions being conducted at sites under any of the administrative options for remedial action described in WAC [173-340-510](#).
- (4) **Circumstances required.** Institutional controls shall be required to assure both the continued protection of human health and the environment and the integrity of an interim action or cleanup action in the following circumstances:
- (a) The cleanup level is established using Method A or B and hazardous substances remain at the site at concentrations that exceed the applicable cleanup level;
 - (b) The cleanup level is established using Method C;
 - (c) An industrial soil cleanup level is established under WAC [173-340-745](#);
 - (d) A groundwater cleanup level that exceeds the potable groundwater cleanup level is established using a site-specific risk assessment under WAC [173-340-720](#)(6)(c) and institutional controls are required under WAC [173-340-720](#)(6)(c)(iii);
 - (e) A conditional point of compliance is established as the basis for measuring compliance at the site;
 - (f) Any time an institutional control is required under WAC [173-340-7490](#) through [173-340-7494](#); or

- (g) Where the department determines such controls are required to assure the continued protection of human health and the environment or the integrity of the interim or cleanup action.
- (5) **Minimum requirements.** A cleanup action relying on institutional controls must meet the requirements specified in WAC [173-340-360](#), just as any other cleanup action. To ensure a cleanup action relying on institutional controls is protective, institutional controls should demonstrably reduce risks. This demonstration should be based on a quantitative, scientific analysis where appropriate.
- (6) **Requirement for primary reliance.** As specified in WAC [173-340-360](#)(3)(a)(vii), a cleanup action must not rely primarily on institutional controls and monitoring at a site, or portion thereof, if it is technically possible to implement a more permanent cleanup action.
- (7) **Periodic review.** The department shall review compliance with institutional control requirements as part of periodic reviews under WAC [173-340-420](#).
- (8) **Format.**
 - (a) For properties owned by a person who has been named as a potentially liable person or who has not been named a potentially liable person by the department but meets the criteria in RCW [70A.305.040](#) for being named a potentially liable person, appropriate institutional controls shall be described in a restrictive covenant on the property. The covenant shall be executed by the property owner and recorded with the register of deeds for the county in which the site is located. This restrictive covenant shall run with the land, and be binding on the owner's successors and assigns.
 - (b) For properties owned by a local, state, or federal government entity, a restrictive covenant may not be required if that entity demonstrates to the department that:
 - (i) It does not routinely file with the county recording officer records relating to the type of interest in real property that it has in the site; and
 - (ii) It will implement an effective alternative system to meet the requirements of subsection (9) of this section.

The department shall require the government entity to implement the alternative system as part of the cleanup action plan. If a government entity meets these criteria, and if it subsequently transfers its ownership in any portion of the property, then the government entity must file a restrictive covenant upon transfer if any of the conditions in subsection (4) of this section still exist.
 - (c) For properties containing hazardous substances where the owner does not meet the criteria in RCW [70A.305.040](#) for being a potentially liable person, the department may approve cleanup actions that include restrictive covenants or other legal and/or administrative mechanisms. The use of legal or administrative mechanisms that do not include restrictive covenants is intended to apply to situations where the release has affected properties near the source of the release not owned by a person potentially

liable under the act. A potentially liable person must make a good faith effort to obtain a restrictive covenant before using other legal or administrative mechanisms. Examples of such mechanisms include zoning overlays, placing notices in local zoning or building department records or state lands records, public notices and educational mailings.

(9) Restrictive covenants. Where required, the restrictive covenant shall:

- (a)** Prohibit activities on the site that may interfere with a cleanup action, operation and maintenance, monitoring, or other measures necessary to assure the integrity of the cleanup action and continued protection of human health and the environment;
- (b)** Prohibit activities that may result in the release of a hazardous substance that was contained as a part of the cleanup action;
- (c)** Require notice to the department of the owner's intent to convey any interest in the site. No conveyance of title, easement, lease, or other interest in the property shall be consummated by the property owner without adequate and complete provision for the continued operation, maintenance and monitoring of the cleanup action, and for continued compliance with this subsection;
- (d)** Require the land owner to restrict leases to uses and activities consistent with the restrictive covenant and notify all lessees of the restrictions on the use of the property. This requirement applies only to restrictive covenants imposed after February 1, 1996;
- (e)** Require the owner to include in any instrument conveying any interest in any portion of the property, notice of the restrictive covenant under this section;
- (f)** Require notice and approval by the department of any proposal to use the site in a manner that is inconsistent with the restrictive covenant. If the department, after public notice and comment approves the proposed change, the restrictive covenant shall be amended to reflect the change; and
- (g)** Grant the department and its designated representatives the right to enter the property at reasonable times for the purpose of evaluating compliance with the cleanup action plan and other required plans, including the right to take samples, inspect any remedial actions taken at the site, and to inspect records.

(10) Local government notification. Before a restrictive covenant being established under this chapter, the department shall notify and seek comment from a city or county department with land use planning authority for real property subject to the restrictive covenant. Once a restrictive covenant has been executed, this same department shall be notified and sent a copy of the restrictive covenant. For independent cleanups reviewed by the department under WAC [173-340-515](#) that use restrictive covenants, the person conducting the cleanup shall be responsible for these notifications.

(11) Financial assurances. The department shall, as appropriate, require financial assurance mechanisms at sites where the cleanup action selected includes engineered and/or institutional controls. It is presumed that financial assurance mechanisms will be required unless the PLP can demonstrate that sufficient financial resources are available and in place to provide for the

long-term effectiveness of engineered and institutional controls adopted. Financial assurances shall be of sufficient amount to cover all costs associated with the operation and maintenance of the cleanup action, including institutional controls, compliance monitoring, and corrective measures.

- (a) **Mechanisms.** Financial assurance mechanisms may include one or more of the following: A trust fund, a surety bond, a letter of credit, financial test, guarantee, standby trust fund, government bond rating test, government financial test, government guarantee, government fund, or financial assurance mechanisms required under another law (for example, requirements for solid waste landfills or treatment, storage, and disposal facilities) that meets the requirements of this section.
- (b) **Exemption from requirement.** The department shall not require financial assurances if persons conducting the cleanup can demonstrate that requiring financial assurances will result in the PLPs for the site having insufficient funds to conduct the cleanup or being forced into bankruptcy or similar financial hardship.

(12) Amendment or removal of institutional controls.

- (a) **Request.** Any person who has an interest in the real property subject to an institutional control may submit a request to the department that the control be amended or removed if the conditions at the site requiring the control under subsection (4) of this section have changed or no longer exist. The request must be in writing.
- (b) **Determination.** If the department determines that the conditions requiring an institutional control under subsection (4) of this section have changed or no longer exist, then the institutional control must be amended or removed.
- (c) **Public participation or notification.**
 - (i) For ecology-conducted or ecology-supervised remedial actions, the department will provide or require public notice of any proposal to amend or remove an institutional control in accordance with WAC [173-340-600](#)(19).
 - (ii) For independent remedial actions, the department will notify the public of any amendment or removal of an institutional control in accordance with WAC [173-340-600](#)(20).

WAC 173-340-450 Releases from regulated underground storage tank systems.**(1) Applicability.**

- (a) Releases.** This section applies only to underground storage tank (UST) systems regulated under chapter [173-360A](#) WAC from which there has been a confirmed release of a regulated substance that may pose a threat to human health or the environment. Under chapter [173-360A](#) WAC, UST system owners and operators and regulated service providers must report such a release to ecology within 24 hours.
- (b) Persons.** This section applies only to UST system owners and operators. UST system owners and operators must comply with the requirements in this section in addition to the other requirements in this chapter.
- (c) Other requirements.** This section does not alter the applicability of requirements in other sections in this chapter.

(2) Purpose. Under chapter [173-360A](#) WAC, UST system owners and operators must investigate and clean up confirmed releases in accordance with the requirements of this chapter. This section specifies interim actions that UST system owners and operators must perform immediately or shortly after confirming a release to reduce threats posed by the release, prevent any further release, and characterize the nature and extent of the release. If the interim actions are insufficient to meet the criteria in WAC [173-340-330](#)(5), UST system owners and operators must conduct further remedial action under the state cleanup law to investigate and clean up the release. WAC [173-340-120](#) provides an overview of the cleanup process under the state cleanup law.

(3) Enforcement. UST system owners and operators who violate any requirement in this chapter are subject to enforcement, including civil penalties and orders, under:

- (a)** Chapter [70A.305](#) RCW and this chapter; or
- (b)** Chapter [70A.355](#) RCW and chapter [173-360A](#) WAC.

(4) Administrative options. The interim actions specified in this section may be conducted under any of the administrative options for remedial action described in WAC [173-340-510](#).

(5) Interim actions. UST owners and operators must perform the following interim actions after confirming a release.

- (a) Initial response.** Within 24 hours of release confirmation, UST system owners and operators must:
 - (i)** Remove as much of the hazardous substance from the UST system as is possible and necessary to prevent further release to the environment;
 - (ii)** Eliminate or reduce any fire, explosion, or vapor hazards and do so in a manner that minimizes any release of hazardous substances to surface water and groundwater; and

- (iii) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of released hazardous substances into surrounding soils, groundwater, and surface water.
- (b) **Initial site characterization.** Within 30 days of release confirmation, UST system owners and operators must investigate the site to identify the hazardous substances released, the source of the release, the media impacted by the release, and the potential for vapors from contaminated soil or groundwater to enter building, utility vaults, or other structures. At a minimum, UST system owners and operators must:
 - (i) Develop a sampling and analysis plan meeting the requirements of WAC [173-340-820](#). The sampling and analysis plan must be based on the substances currently or previously stored in the UST system, type of subsurface soils, depth to groundwater, vapor intrusion pathways, and other factors as appropriate for identifying the presence and source of the release;
 - (ii) Collect, handle, and analyze samples in accordance with the requirements in WAC [173-340-830](#);
 - (iii) Collect samples in the environment where hazardous substances are most likely to be present;
 - (iv) Investigate groundwater for the presence of hazardous substances and free product if there is evidence of any of the following conditions at the site:
 - (A) Contaminated soil is in contact with the groundwater;
 - (B) Contaminated soil extends below the lowest soil sampling depth;
 - (C) Groundwater contamination has been detected or observed;
 - (D) The release has migrated to surface water or wetlands; or
 - (E) There is no evidence of the conditions in (b)(iv)(A) through (D) of this subsection, but UST owners and operators cannot demonstrate to ecology's satisfaction that the release does not pose a threat to groundwater;
 - (v) Analyze collected samples for the hazardous substances released from the UST system, including:
 - (A) For petroleum, the substances specified in Table 830-1 based on the product stored; and
 - (B) For other hazardous substances, the substance stored and any likely decomposition by-products;
 - (vi) Conduct any other investigations required by ecology; and

- (vii) Properly manage and dispose any waste materials, including contaminated soil and water, generated as a result of the initial site characterization in accordance with applicable state and federal laws. See WAC [173-340-710](#).
 - (c) **Free product removal.** If free product is discovered at the site, as soon as possible but no later than 30 days after release confirmation, UST system owners and operators must initiate actions to remove the free product while continuing, as necessary, any other actions required under this section. At a minimum, UST system owners and operators must:
 - (i) Conduct free product removal to the maximum extent practicable and in a manner that minimizes the spread of hazardous substances by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site. At a minimum, the free product removal system must be designed and operated to stop the free product migration;
 - (ii) Properly treat, discharge, or dispose of any hazardous substance, water, sludge or any other materials collected in the free product removal process in accordance with applicable state and federal laws. See WAC [173-340-710](#);
 - (iii) Handle all flammable products safely to prevent fires and explosions;
 - (iv) Unless otherwise directed by ecology, monitor in accordance with WAC [173-360A-0665](#)(4) for the presence of free product at least quarterly; and
 - (v) Unless otherwise directed by ecology, submit to ecology written quarterly progress reports describing the results of the monitoring and free product removal actions. The first report may be combined with the interim action report required under subsection (6) of this section.
 - (d) **Continuing obligations.** UST system owners and operators must continue to conduct the following measures to abate hazards at the site while continuing, as necessary, any other remedial action required under the state cleanup law:
 - (i) Monitor and mitigate any additional fire and safety hazards posed by vapors or free product that may have migrated from the UST system into nearby buildings or other structures, such as underground utilities;
 - (ii) Reduce the threat to human health and the environment posed by contaminated soils excavated or discovered as a result of any remedial action; and
 - (iii) Properly manage and dispose any waste materials, including contaminated soil and water, generated as a result of any remedial action in accordance with applicable state and federal laws. See WAC [173-340-710](#).
 - (6) **Interim action report.** Within 90 days of release confirmation, UST system owners and operators must submit an interim action report to ecology about the site and nature of the

release. This report must comply with the submittal requirements in WAC [173-340-840](#) and include, at a minimum, the following information:

- (a)** A summary of the initial response actions required under subsection (5)(a) of this section, and any resulting information and data;
- (b)** The results of the initial site characterization required under subsection (5)(b) of this section, and any other investigations conducted at the site, including:
 - (i)** The source(s) of the releases;
 - (ii)** An explanation of how the releases occurred;
 - (iii)** The hazardous substances released, and the estimated quantity of hazardous substances released;
 - (iv)** The media contaminated by those releases and, to the extent known, the nature and extent of contamination within those media, and sample locations.
 - (A)** If groundwater has not been tested, UST system owners and operators must include a demonstration that the release does not pose a threat to groundwater.
 - (B)** If no potential vapor intrusion pathways have been identified, UST system owners and operators must include a demonstration that there is no potential for vapors from contaminated soil or groundwater to enter buildings, utility vaults, or other structures;
 - (v)** The results of the free product investigation, if applicable; and
 - (vi)** To the extent known, the pathways of exposure at the site and the human or ecological receptors affected by the releases;
- (c)** The physical characteristics of the site, including:
 - (i)** The location of tax parcels, property boundaries, right-of-ways, and above and below-ground structures;
 - (ii)** The geology of the site, including subsurface soil conditions;
 - (iii)** The hydrology of the site, including depth to groundwater, direction of groundwater flow, approximate location of wells potentially affected by the release, proximity of the release to and potential for affecting surface water and wetlands, the quality and use of groundwater and surface water;
 - (iv)** The location of underground utilities and other potential conduits for vapor or free product migration;
 - (v)** The population and uses of the site and surrounding area; and
 - (vi)** The proximity of the release to sensitive environments;

- (d) Diagrams and cross-sections of the site, as appropriate, reflecting the information required in (b) and (c) of this subsection;
 - (e) At sites where investigations indicate free product is present, information on the free product removal efforts, including:
 - (i) Name of the person responsible for implementing the free product removal measures;
 - (ii) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;
 - (iii) The type of free product recovery system used;
 - (iv) If the recovery or monitoring of free product results in any discharges, then:
 - (A) The location of such discharges;
 - (B) The type of treatment applied to, and the effluent quality expected from such discharges; and
 - (C) The steps taken and planned to obtain necessary permits for such discharges; and
 - (v) Disposition of recovered free product and other contaminated materials generated by site investigations and cleanup;
 - (f) A description of any other on-going or completed remedial actions, and the results of such actions;
 - (g) A description of any planned remedial actions;
 - (h) The type of mechanism used to meet the financial responsibility requirements of WAC [173-360A-1045](#)(2)(a), and if the mechanism is an insurance policy, then:
 - (i) Whether a claim has been made on the policy; and
 - (ii) Whether the insurer has accepted or denied the claim; and
 - (i) Any other information required by ecology.
- (7) **Further remedial action.** If the interim actions required under this section are insufficient to meet the criteria in WAC [173-340-330](#)(5), UST system owners and operators must conduct further remedial action under the state cleanup law to investigate and clean up the release. WAC [173-340-120](#) provides an overview of the cleanup process under the state cleanup law.
- (8) **Periodic updates on remedial actions.** At least every three years after release confirmation or more frequently as directed by ecology, UST system owners and operators must update the interim action report required under subsection (6) of this section and submit it to ecology unless:
- (a) The site has been removed from the contaminated sites list under WAC [173-340-330](#);

- (b)** Ecology is conducting remedial actions at the site or is supervising remedial actions at the site under an order or decree; or
- (c)** The site is enrolled in a technical assistance program under WAC [173-340-515](#)(5) or chapter [374-80](#) WAC.

Part 5 – Administrative Procedures for Remedial Actions

WAC 173-340-500 Determination of status as a potentially liable person.

- (1) **Status letter.** The department shall issue a potentially liable person status letter to any person it believes to be potentially liable as provided for in RCW [70A.305.020](#)(26), unless an emergency requires otherwise. Persons will be notified when the department has credible evidence of their potential liability under RCW [70A.305.040](#) and when the department is ready to proceed with remedial action except for emergencies and initial investigations. The status letter shall be sent by certified mail, return receipt requested, or by personal service.
- (2) **Contents of letter.** The status letter shall provide:

 - (a) The name of the person the department believes to be potentially liable;
 - (b) A general description of the location of the facility;
 - (c) The basis for the department's belief that the person has a relationship to the facility;
 - (d) The basis for the department's belief that a release or threatened release of a hazardous substance has occurred at the facility and that the release or threatened release poses a threat to human health or the environment;
 - (e) An indication of the department's intentions regarding enforcement or other actions at the facility; and
 - (f) The names of other persons to whom the department has sent a status letter.
- (3) **Opportunity to comment.** Any comments shall be submitted in writing to the department within 30 days from the date of receipt by the potentially liable person of the status letter unless the department provides an extension.
- (4) **Determination of status.** If after reviewing any comments submitted, the department concludes that credible evidence supports a finding of potential liability, then the department shall issue a determination of potentially liable person status.
- (5) **Voluntary waiver.** Persons may accept status as a potentially liable person at any time through a voluntary waiver of their right to notice and comment.
- (6) **Additional potentially liable persons.** The department reserves the right to notify additional potentially liable persons at any time, and as resources permit, will facilitate potentially liable persons' efforts to identify additional potentially liable persons. The department shall notify in writing, all persons who previously received a status letter for the facility whenever additional status letters have been sent.

WAC 173-340-510 Administrative options for remedial actions.

At sites where ecology has determined remedial action is necessary under the state cleanup law, it is the responsibility of each and every liable person to conduct remedial action so that the sites are cleaned up well and expeditiously. This section provides an overview of the administrative options for remedial action and the process for initiating remedial action. If there are any inconsistencies between this section and any specifically referenced sections, the referenced section governs.

- (1) Independent remedial action.** A person may investigate or clean up a site independently, without ecology supervision or approval, except as provided under WAC [173-340-515\(2\)](#).
 - (a) Standards.** When reviewing an independent remedial action, ecology determines whether it complies with the substantive requirements of the state cleanup law. Persons conducting an independent remedial action do so at their own risk. Ecology may require additional remedial action if it determines that such action is necessary under the state cleanup law. See WAC [173-340-515\(3\)](#).
 - (b) Reports.** Persons conducting independent remedial action must report all investigations, interim actions, and cleanup actions to ecology. Reports must include sufficient information for ecology to determine whether the remedial action meets the substantive requirements of the state cleanup law. See WAC [173-340-515\(4\)](#).
 - (c) Technical assistance.** Persons planning or conducting independent remedial action may request technical assistance from ecology, including advice on how to investigate and clean up a site and written opinions on whether a planned or completed remedial action meets the substantive requirements of the state cleanup law. Ecology may charge a fee for providing requested technical assistance. PLIA may also provide technical assistance for certain sites under RCW [70A.330.040\(7\)](#) and chapter [374-80](#) WAC.
- (2) Ecology-supervised remedial action.** Ecology may supervise the investigation or cleanup of a site by a potentially liable person or a prospective purchaser under an order or decree. Such persons are encouraged to initiate discussions and negotiations with ecology and the attorney general that may lead to an agreement with the state of Washington on the remedial action to be conducted at a site. Ecology and the state will only approve of remedial action if it is an ecology-supervised remedial action.
 - (a) Consent decree.** Ecology and the attorney general may require remedial action as part of a settlement agreement with a potentially liable person or a prospective purchaser. A settlement agreement must be entered as a consent decree issued by a court of competent jurisdiction. See RCW [70A.305.040\(4\)](#) and (5), and WAC [173-340-520](#).
 - (i) Settlement.** A consent decree may contain a covenant not to sue and provide protection from contribution claims.
 - (ii) Initiation.** Negotiations for a consent decree may be initiated by a potentially liable person, a prospective purchaser, or ecology.

- (b) **Agreed order.** Ecology may issue an order requiring remedial action with which a potentially liable person or a prospective purchaser agrees to comply. See RCW [70A.305.020](#)(1), [70A.305.050](#)(1), and [70A.305.040](#)(6) and WAC [173-340-530](#).

 - (i) **No settlement.** An agreed order is not a settlement agreement and does not contain a covenant not to sue or provide protection from contributions claims.
 - (ii) **Initiation.** Discussions for an agreed order may be initiated by a potentially liable person, a prospective purchaser, or ecology.
- (c) **Enforcement order.** Ecology may issue an enforcement order requiring a potentially liable person to conduct remedial action. See RCW [70A.305.050](#)(1) and WAC [173-340-540](#).
- (3) **Ecology-conducted remedial action.** Ecology may take appropriate remedial action to investigate or clean up a site at any time. Ecology typically conducts remedial action when a potentially liable person cannot be identified or when such persons are technically or financially unable to conduct remedial action. Ecology may seek to recover its remedial action costs from potentially liable persons. Except for emergency actions and initial investigations, ecology will make a reasonable effort to notify potentially liable persons before conducting remedial action. See RCW [70A.305.030](#)(1) and [70A.305.050](#)(3).

WAC 173-340-515 Independent remedial actions.

- (1) **Purpose.** An independent remedial action is a remedial action conducted without department oversight or approval and not under an order, agreed order or consent decree. This section describes the procedures and requirements for independent remedial actions. See WAC [173-340-545](#) for additional requirements pertaining to independent remedial actions anticipated to be part of a private right of action.
- (2) **Applicability.** Nothing in this chapter shall preclude potentially liable persons from conducting independent remedial actions at sites not in discussions or negotiations for, or under, an order or decree. However, a potentially liable person may not conduct independent remedial actions after commencing discussions or negotiations for an agreed order or consent decree unless:

 - (a) Such action does not foreclose or preempt the remedial actions under discussion or negotiation and such action does not foreclose the selection of a cleanup action; or
 - (b) The potentially liable person has provided reasonable notice to the department and the department does not object to such action.
- (3) **Standards.**

 - (a) In reviewing independent remedial actions, the department shall determine whether the remedial actions meet the substantive requirements of the state cleanup law and/or whether further remedial action is necessary at the site. Persons conducting independent remedial actions do so at their own risk, and may be required to take additional remedial actions if the department determines such actions are necessary. In such circumstances, the department reserves all of its rights to take actions authorized by law.
 - (b) When this chapter requires a consultation with, or an approval or determination by the department, such a consultation, approval or determination is not necessary in order to conduct an independent remedial action. However, independent remedial actions must still meet the substantive requirements of the state cleanup law.
 - (c) Except for the requirement of a restrictive covenant under WAC [173-340-440](#), where documents are required under the state cleanup law, the documents prepared need not be the same in title or format; however, the documents must still contain sufficient information to serve the same purpose. The scope and level of detail in these documents may vary from site to site depending on the site-specific conditions and the complexity of the remedial action.
- (4) **Reports to the department.**

 - (a) **Applicability and timing.**

 - (i) **Investigations.** Any person who conducts an independent investigation of a release required to be reported under WAC [173-340-300](#) must submit a written report to the department within 90 days of the completion of the investigation. For the purposes of this subsection:

- (A) An investigation is any remedial action conducted as part of a remedial investigation of the site under WAC [173-340-350](#); and
 - (B) An investigation is complete if no remedial action other than compliance monitoring has occurred at the site for 90 days. This means that an investigation may need to be reported separately from an interim action or cleanup action and that an individual investigation may need to be reported separately from other investigations of the site.
 - (ii) **Interim actions and cleanup actions.** Any person who conducts an independent interim action or cleanup action for a release required to be reported under WAC [173-340-300](#) must submit a written report to the department within 90 days of the completion of the action. For the purposes of this subsection, an interim action or cleanup action is complete if no remedial action other than compliance monitoring has occurred at the site for 90 days.
 - (iii) **Releases from regulated UST systems.** For releases from UST systems regulated under chapter [173-360A](#) WAC, see WAC [173-340-450](#) for additional requirements for reporting independent remedial actions.
 - (b) **Content.** An independent remedial action report must include the information in WAC [173-340-300](#)(3) if not already reported, and enough information to determine if the remedial action meets the substantive requirements of the state cleanup law, including the results of all site investigations, feasibility studies, interim actions, cleanup actions, and compliance monitoring planned or under way. Previously reported information may be summarized and referenced to avoid unnecessary duplication. The report must comply with the requirements in WAC [173-340-840](#). If a restrictive covenant is used, it must be included in the report and it must meet the requirements specified in WAC [173-340-440](#)(9). The department may require additional reports on the work conducted.
 - (c) **Initial investigation.** If the independent investigation, interim action, or cleanup action is completed within 90 days of release discovery, the department may defer completing any needed initial investigation of the release to enable review of the independent remedial action and report in accordance with WAC [173-340-310](#)(5)(b).
 - (d) **Notification.** The department will notify the public of an independent investigation, interim action, or cleanup action report received under this section in accordance with WAC [173-340-600](#)(20).
 - (e) **Liability.** Neither submission of information on an independent remedial action nor any response by the department shall release the person submitting the report or any other person from liability. The department reserves all rights to pursue any subsequent action it deems appropriate.
- (5) **Technical consultations.** The department may provide informal advice and assistance (technical consultations) on the administrative and technical requirements of the state cleanup law to persons conducting or otherwise interested in an independent remedial action. Such advice or

assistance is advisory only and not binding on the department. This advice may include written opinions. These written opinions shall be limited to whether the independent remedial actions or proposals for those actions meet the substantive requirements of the state cleanup law and/or whether the department believes further remedial action is necessary at the site.

- (a)** Upon completing the review of an independent remedial action report or proposal that is voluntarily submitted for the department's review and opinion, the department will:

 - (i)** Provide a written opinion regarding the remedial actions performed or proposed at the site;
 - (ii)** Provide a written opinion regarding the remedial actions performed at the site and remove the site from the contaminated sites list if the department has sufficient information to show that the independent remedial actions are appropriate to characterize and address contamination at the site, as specified in WAC [173-340-330](#)(5); or
 - (iii)** Provide a written opinion describing the deficiencies with the remedial action or proposal for a remedial action at the site.
- (b)** It is the department's policy, in conducting reviews under this subsection, to promote independent remedial actions by delisting sites whenever petitions and supporting documents show that the actions taken are appropriate to characterize and address the contamination at the site.
- (c)** The department will notify the public of a written opinion issued under this subsection in accordance with WAC [173-340-600](#)(20).
- (6) Cost of technical consultations.** For information on the payment of remedial action costs, see WAC [173-340-550](#)(6).

WAC 173-340-520 Consent decrees.

- (1) **Procedures for consent decrees initiated by potentially liable persons.** To request a consent decree a person shall submit a letter to the department and office of the attorney general via certified mail, return receipt requested, or by personal delivery.
- (a) **Request.** The letter shall describe, based on available information:
- (i) The proposed remedial action, including the schedule for the work;
 - (ii) Information which demonstrates that the settlement will lead to a more expeditious cleanup, be consistent with cleanup standards if the remedial action is a cleanup action, and be consistent with any previous orders;
 - (iii) The facility, including location and boundaries;
 - (iv) The environmental problems to be addressed including a description of the releases at the facility and the potential impact of those releases to human health and the environment;
 - (v) A summary of the relevant historical use or conditions at the facility;
 - (vi) The date on which the potentially liable person will be ready to submit a detailed proposal;
 - (vii) Any special scheduling considerations for implementing the remedial actions;
 - (viii) Names of other persons who the person has reason to believe may be potentially liable persons at the facility; and
 - (ix) A proposed public participation plan. This proposed plan shall be commensurate with the nature of the proposal and site and shall include the elements listed in WAC [173-340-600](#)(8).
- (b) The letter may include:
- (i) A waiver of the procedural requirements of WAC [173-340-500](#) and acceptance, for purposes of settlement, of potentially liable person status.
 - (ii) The contents of detailed proposal under (g) of this subsection.
- (c) A prospective purchaser consent decree is a particular type of consent decree entered into with a person not currently liable for remedial action at the site who proposes to purchase, redevelop, or reuse the site. RCW [70A.305.040](#)(5) contains specific statutory requirements for this type of decree. In addition to the information in (a) and (b) of this subsection, a request for a prospective purchaser consent decree shall include:
- (i) Identification of all persons proposing to enter into the consent decree and information which demonstrates that those persons are not currently liable for remedial action at the site;

- (ii) Information which demonstrates that the settlement will yield substantial new resources to facilitate cleanup;
 - (iii) A general description of the proposed continued use or redevelopment or reuse of the site, including the proposed schedule for purchase, redevelopment, or reuse; and
 - (iv) Information describing whether and how the proposed settlement will provide a substantial public benefit.
- (d) Recognizing that the steps of the cleanup process may be combined and may vary by site, the information in the request shall be at the level of detail appropriate to the steps in the process for which the consent decree is requested. For example, a request for a consent decree for a remedial investigation/feasibility study should generally include the level of information needed for a site hazard assessment, if not already done by the department, so that the department and the public can evaluate the proposed scope of work and relative priority of the site.
- (e) The department may waive part of the letter requirements of (a) of this subsection if the requirements have already been met.
- (f) **Response.** The department shall respond to the request within 60 days, unless the department needs additional time to determine potentially liable person status under WAC [173-340-500](#). This determination will be based in part on a preliminary finding by the department that any resulting consent decree would be in accordance with RCW [70A.305.040](#)(4)(a). The department may:
 - (i) Request additional information;
 - (ii) Accept the request and require the person to submit a detailed written proposal by a specified date; or
 - (iii) Provide written reasons for denying the request.
- (g) **Contents of detailed proposal.** The proposal shall contain:
 - (i) A proposed technical scope of work describing the remedial action to be conducted;
 - (ii) The data, studies, or any other information upon which the settlement proposal is based;
 - (iii) A statement describing the potentially liable person's ability to conduct or finance the remedial action as described in the proposed scope of work;
 - (iv) A schedule for proposed negotiations and implementation of the proposed remedial actions; and
 - (v) Any additional information requested by the department.

- (h) In addition to the information in (g) of this subsection, the detailed proposal for a prospective purchaser consent decree shall include the following:
 - (i) Information showing a legal commitment to purchase, redevelop or reuse the site;
 - (ii) A detailed description including a plan of the proposed continued use, redevelopment, or reuse of the site, including, if necessary, an updated schedule for purchase, redevelopment or reuse;
 - (iii) Information which demonstrates that the redevelopment or reuse of the site is not likely to contribute to the existing or threatened releases at the site, interfere with remedial actions that may be needed at the site, or increase health risks to persons at or in the vicinity of the site; and
 - (iv) If the requestor does not propose to conduct the entire cleanup of the site, available information about potentially liable persons who are expected to conduct the remainder of the cleanup.
- (i) The department and the office of the attorney general shall determine whether the proposal provides a sufficient basis for negotiations, and shall deliver to the potentially liable person within 60 days following receipt of their proposal a written notice indicating whether or not the proposal is sufficient to proceed with negotiations.
- (j) **Prepayment agreement.** Unless otherwise determined by the department, any person who requests a prospective purchaser agreement and receives a notice accepting the request under (f) of this subsection shall enter into a prepayment agreement with the department consistent with WAC [173-340-550](#)(7) before negotiations will begin.
- (k) **Time limits for negotiations.** The department shall set the time period and starting date for negotiations. The department and the office of the attorney general shall then negotiate with those potentially liable persons who have received a notice under (f) of this subsection that their proposal was sufficient to proceed with negotiations. Negotiations may address one or more phases of remedial action..
- (l) **Enforcement stay.** For consent decrees that are not prospective purchaser agreements, unless an emergency exists, the department will stay any enforcement action under chapter [70A.305](#) RCW, but the duration of such stay shall not exceed 120 days from the date negotiations begin. The department can withdraw from negotiations if it determines that:
 - (i) Reasonable progress is not being made toward a consent decree acceptable to the department; or
 - (ii) The proposal is inappropriate based on new information or changed circumstances.

The department may begin an enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

- (2) **Procedures for consent decrees initiated by the department.** When the department believes that a consent decree will be a more expeditious method to achieve remedial action at a facility, it may initiate the procedures set forth in this subsection by sending a letter to the potentially liable person. The letter shall be sent via certified mail, return receipt requested, or by personal service.
- (a) The letters may be delivered with potentially liable person status letters issued under WAC [173-340-500](#). The period for negotiation shall not commence until the 30-day comment period required by WAC [173-340-500](#) has expired or the person expressly waives the procedural requirements of WAC [173-340-500](#).
- (b) **Contents of letter.** The letter shall:
- (i) Inform potentially liable person(s) that the department and the attorney general want to begin negotiations which may lead to a consent decree providing for remedial action;
 - (ii) Propose a draft consent decree and scope of work;
 - (iii) Define the negotiation process and schedule which shall not exceed 90 days;
 - (iv) Reference the department's finding under WAC [173-340-500](#);
 - (v) Request a written statement of the potentially liable person's willingness to proceed with the negotiation process defined in the letter; and
 - (vi) Request the names of other persons whom the person has reason to believe may be potentially liable persons at the facility.
- (c) The letter may request the potentially liable person to respond, in writing, to the proposed draft consent decree and scope of work before beginning the negotiation phase.
- (d) **Negotiations.** The department and the office of the attorney general shall negotiate with potentially liable persons who have indicated to the department a willingness to proceed with the negotiations. The negotiation time frame shall begin from the date the potentially liable person receives the letter under (a) of this subsection unless modified by the department. Negotiations may address one or more phases of remedial action.
- (e) **Enforcement stay.** Unless an emergency exists, the department will stay any enforcement action under chapter [70A.305](#) RCW, but the duration of the stay shall not exceed 90 days from the date negotiations begin. The department can withdraw from negotiations if it determines that:
- (i) Reasonable progress is not being made toward a consent decree acceptable to the department; or
 - (ii) The proposal is inappropriate based on new information or changed circumstances. The department may commence with enforcement action after

notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

- (f) **Deadline extensions.** The department may, at its discretion, extend the deadline for negotiations established in (b) of this subsection, provided the extension does not exceed 30 days.
- (3) **Filing a decree.** After satisfying the public comment and hearing requirements, the department shall determine whether the proposed settlement negotiated under subsection (1) or (2) of this section, is more expeditious and consistent with cleanup standards established and in compliance with any order issued by the department relevant to the remedial action. After making the requisite findings, the department shall forward the proposed consent decree with the findings required by RCW [70A.305.040](#)(4), to the office of the attorney general. If agreed to by the office of the attorney general, the consent decree will be filed by that office with the appropriate superior court or the federal court having jurisdiction over the matter.

WAC 173-340-530 Agreed orders.

- (1) **Purpose.** Agreed orders may be used for all remedial actions. An agreed order means that the potentially liable person agrees to perform remedial actions at the site in accordance with the provisions of the agreed order and that the department will not take additional enforcement action against the potentially liable person to require those remedial actions specified in the agreed order so long as the potentially liable person complies with the provisions of the order. Since an agreed order is not a settlement, an agreed order shall not provide for mixed funding, a covenant not to sue, or protection from claims for contribution. The department may require additional remedial actions should it deem such actions necessary.
- (2) **Procedures for agreed orders initiated by a potentially liable person.**
- (a) To request an agreed order, a person shall submit a letter to the department based on available information, describing:
- (i) The proposed remedial action including a schedule for the work;
 - (ii) The facility, including location and boundaries;
 - (iii) The environmental problems to be addressed, including the releases at the facility and the potential impact of those releases to human health and the environment;
 - (iv) A summary of the relevant historical use or conditions at the facility;
 - (v) Names of other persons whom the person has reason to believe may be potentially liable persons at the facility; and
 - (vi) A proposed public participation plan. This proposed plan shall be commensurate with the nature of the proposal and site and shall include, at a minimum, the elements listed in WAC [173-340-600\(8\)](#).
- (b) The letter may include a waiver of the procedural requirements of WAC [173-340-500](#), and acceptance, for purposes of the agreed order, of potentially liable person status.
- (c) Recognizing that the basic steps of the cleanup process may be combined and may vary by site, the information in the request shall be at the level of detail appropriate to the step in the process for which the order is requested. For example, a request for an agreed order for a remedial investigation/feasibility study should generally include the level of information needed for a site hazard assessment, so that the department and the public can evaluate the proposed scope of work and relative priority of the site.
- (d) The department may waive part of the letter requirements of (a) of this subsection if the requirements have already been met.
- (3) **Department response to PLP-initiated request.** The department shall respond to the request within 60 days, unless the department needs additional time to determine potentially liable person status under WAC [173-340-500](#). The department may:
- (a) Request additional information;

- (b) Proceed with discussions, if the department believes it is in the public interest to do so; or
 - (c) Provide written reasons for denying the request.
- (4) **Procedures for agreed orders initiated by the department.** When the department believes that an agreed order is an appropriate method to achieve remedial action at a facility, it may initiate the request for an agreed order.
- (5) **Duration of discussions.** Discussions on the agreed order shall not exceed 60 days unless the department decides continued discussions are in the public interest.
- (6) **Enforcement.** Unless an emergency exists, the department will stay any enforcement action under chapter [70A.305](#) RCW; however, the duration of such stay shall not exceed 60 days from the date discussions begin. Furthermore, the department can withdraw from discussions if it determines that:
 - (a) Reasonable progress is not being made toward an agreed order acceptable to the department; or
 - (b) The agreed order is inappropriate based on new information or changed circumstances.The department may begin an enforcement action after notifying the potentially liable person in writing of its intent to withdraw from discussions.
- (7) **Focus of discussions.** The focus of discussions for the agreed order shall ordinarily be the technical scope of work and work schedule. This subsection is not intended to preclude discussion on any item. It is intended to convey the expectation that the scope of work and work schedule will be the primary topics of discussion in developing agreed orders.
- (8) **Public participation.**
 - (a) When issuing an agreed order, the department shall provide or require public notice in accordance with WAC [173-340-600](#)(11).
 - (b) If the department and the potentially liable person signing the order agree to substantial changes in the order, the department shall provide or require appropriate additional public notice in accordance with WAC [173-340-600](#)(11).

WAC 173-340-540 Enforcement orders.

The department may issue an enforcement order requiring remedial action after issuing a notice of potentially liable person status letter under WAC [173-340-500](#). In emergencies, the notice of potentially liable person status may occur concurrently with the issuance of the order. Unless an emergency requires otherwise, the issuance of a potentially liable person status letter shall precede or take place concurrently with the issuance of an enforcement order. Furthermore, except in an emergency, the department shall issue its determination under WAC [173-340-500](#)(4) before an enforcement order can become effective. Failure to comply with an enforcement order may result in substantial liability for costs and penalties as specified in RCW [70A.305.050](#).

WAC 173-340-545 Private rights of action.

- (1) **Purpose.** A private right of action is a legal claim authorized by RCW [70A.305.080](#) under which a person may recover costs of remedial action from other persons liable under the act. RCW [70A.305.080](#) limits recovery of remedial action costs to those remedial actions that, when evaluated as a whole, are the substantial equivalent of a department-conducted or department-supervised remedial action. The purpose of this section is to facilitate private rights of action and minimize department staff involvement in these actions by providing guidance to potentially liable persons and the court on what remedial actions the department would consider the substantial equivalent of a department-conducted or department-supervised remedial action. In determining substantial equivalence, the department anticipates the requirements in this section will be evaluated as a whole and that a claim would not be disallowed due to omissions that do not diminish the overall effectiveness of the remedial action.
- (2) **Substantial equivalent.** For the purposes of this section, the department considers the following remedial actions to be the substantial equivalent of a department-conducted or department-supervised remedial action.
- (a) A remedial action conducted by the department;
 - (b) A remedial action that has been or is being conducted under an order or decree and the remedial requirements of the order or decree have been satisfied for those portions of the remedial action for which the private right of action is being sought; or
 - (c) A remedial action that has been conducted as an independent remedial action that includes the following elements:
 - (i) Information on the site and remedial actions conducted has been reported to the department in accordance with WAC [173-340-300](#), [173-340-450](#) and [173-340-515](#), as applicable;
 - (ii) The department has not objected to the remedial action being conducted or any such objection has been cured as determined by the court;
 - (iii) Except for emergency remedial actions, before conducting an interim action or cleanup action, reasonable steps have been taken to provide advance public notice;
 - (iv) The remedial actions have been conducted substantially equivalent with the technical standards and evaluation criteria described in subsection (4) of this section; and
 - (v) For facilities where hazardous substances have been disposed of as part of the remedial action, documentation is available indicating where these substances were disposed of and that this disposal was in compliance with applicable state and federal laws. It is not the intent of this provision to require extensive documentation. For example, if the remedial action results in solid wastes being transported offsite for disposal, it would be sufficient to have records indicating

the wastes have been disposed of at a permitted solid waste or hazardous waste landfill.

(3) Public notice requirements. This subsection shall be used to determine if reasonable steps have been taken to provide advance public notice under subsection (2)(c)(iii) of this section. These public notice procedures apply only to interim actions or cleanup actions conducted as independent remedial actions after December 25, 1993. The notice may be combined with any notices under another law. For interim actions or cleanup actions conducted as independent remedial actions before December 25, 1993, the department recognizes little or no public notification typically occurred because there were no department-specified requirements other than the reporting requirements in this chapter. For these actions, this chapter contains no other specific public notice requirements or guidance, and the court will need to determine such requirements, if any, on a case-by-case basis. For independent remedial actions consisting of site investigations and studies, it is anticipated that public notice would not normally be done since often these early phases of work are to determine if a release even requires an interim action or cleanup action. For the purposes of this section only, unless the court determines other notice procedures are adequate for the site-specific circumstances, the following constitutes adequate public notice for independent remedial actions and supersedes the requirements in WAC [173-340-600](#):

- (a)** Except for emergency remedial actions, written notification has been provided at least 15 days before beginning construction of the interim action or cleanup action to the last known address of the following persons:
 - (i)** The department (which shall publish a summary of the notice in the *Contaminated Site Register*);
 - (ii)** The local jurisdictional health department/district;
 - (iii)** The town, city or county with land use jurisdiction;
 - (iv)** The land owners identified by the tax assessor at the time the action is begun for that portion of the facility where the interim action or cleanup action is being conducted; and
 - (v)** Persons potentially liable under RCW [70A.305.040](#) known to the person conducting the interim action or cleanup action. In identifying persons potentially liable under RCW [70A.305.040](#) who are to be noticed under this provision, the person conducting the remedial action need only make a reasonable effort to review information currently readily available. Where the interim action or cleanup action is complex, written notification before beginning detailed design is recommended but not required. For emergency remedial actions, written notice should be provided as soon as practicable;
- (b)** The written notification includes: A brief statement describing the releases being remedied and the interim actions or cleanup actions expected to be conducted; the schedule for these interim actions or cleanup actions; and, for persons potentially liable under RCW [70A.305.040](#) known to the person conducting the interim actions or cleanup

actions, a statement that they could be held liable for the costs of remedial actions being conducted; and

- (c) Posting a sign at the site at a location visible to the general public indicating what interim actions or cleanup actions are being conducted and identifying a person to contact for more information. Except for emergency remedial actions this sign should be posted not later than the beginning of construction of any interim action or cleanup action and should remain posted for the duration of the construction. For emergency remedial actions posting of a sign should be done as soon as practicable;
- (4) **Technical standards and evaluation criteria.** This subsection shall be used to determine if the remedial actions have been conducted substantially equivalent with the technical standards and evaluation criteria contained in this chapter. For the purposes of this section, remedial actions shall be deemed to comply with subsection (2)(c)(iv) of this section if they have been conducted substantially equivalent with the technical standards and evaluation criteria contained in the following sections, where applicable. Except for a restrictive covenant under WAC [173-340-440](#), where documents are required by the following sections, the documents prepared need not be the same in title or format. Other documents can be used in place of the documents specified in these sections as long as sufficient information is included in the record to serve the same purpose. When using the following sections to determine substantial equivalence it should be recognized that there are often many alternative methods for cleanup of a facility that would comply with these provisions. When this chapter requires a consultation with, or an approval or determination by the department, such a consultation, approval or determination is not necessary for remedial actions to meet the substantial equivalence requirement under this section; however, the remedial action must still be conducted substantially equivalent with the substantive requirements of those provisions. In applying these sections, reference should be made to the other applicable sections of this chapter, with particular attention to WAC [173-340-130](#) (Administrative principles), WAC [173-340-200](#) (Definitions), and WAC [173-340-210](#) (Usage).
- (a) WAC [173-340-350](#) (Remedial investigation);
 - (b) WAC [173-340-351](#) (Feasibility study);
 - (c) WAC [173-340-355](#) (Development of cleanup action alternatives that include remediation levels);
 - (d) WAC [173-340-357](#) (Quantitative risk assessment of cleanup action alternatives);
 - (e) WAC [173-340-360](#) (Cleanup action requirements);
 - (f) WAC [173-340-370](#) (Cleanup action expectations);
 - (g) WAC [173-340-380](#) (Cleanup action plan);
 - (h) WAC [173-340-400](#) (Cleanup action implementation);
 - (i) WAC [173-340-410](#) (Compliance monitoring requirements);
 - (j) WAC [173-340-430](#) (Interim actions);

- (k) WAC [173-340-440](#) (Institutional controls);
- (l) WAC [173-340-450](#) (Releases from regulated underground storage tank systems);
- (m) WAC [173-340-700](#) through [173-340-760](#) (Cleanup standards); and
- (n) WAC [173-340-810](#) through [173-340-850](#) (General provisions).

WAC 173-340-550 Payment of remedial action costs.

- (1) **Policy.** RCW [70A.305.050](#)(3) requires that the state seek to recover the amounts spent by the department for investigative and remedial actions and orders. It is the department's intention to recover those costs which are reasonably attributable to individual sites. Timing of cost recovery for individual sites will be considered on a case-by-case basis, however, the department may demand, and generally requires, payment of costs as they are incurred.
- (2) **Costs.** Each person who is liable under chapter [70A.305](#) RCW is liable for remedial action costs incurred by the department. Remedial action costs are costs reasonably attributable to the site and may include costs of direct activities, support costs of direct activities, and interest charges for delayed payments. The department may send its request for payment to all potentially liable persons who are under an order or decree for the remedial action costs at the site. The department shall charge an hourly rate based on direct staff costs plus support costs. It is the department's intention that the resulting hourly rate charged be less than the hourly rate typically charged by a comparably sized consulting firm providing similar services. The department shall use the following formula for computing hourly rates:

Hourly Rate = DSC + DSC(ASCM) + DSC(PSCM), where:

DSC = Direct Staff Costs defined in (a) of this subsection.

ASCM = Agency Support Cost Multiplier defined in (b) of this subsection.

PSCM = Program Support Cost Multiplier defined in (c) of this subsection.

- (a) Costs of direct activities are direct staff costs and other direct costs. Direct staff costs (DSC) are the costs of hours worked directly on a contaminated site, including salaries, retirement plan benefits, Social Security benefits, health care benefits, leave and holiday benefits, and other benefits required by law to be paid to, or on behalf of, employees. Other direct costs are costs incurred as a direct result of department staff working on a contaminated site including, for example, costs of: Travel related to the site, printing and publishing of documents about the site, purchase or rental of equipment used for the site, and contracted work for the site.
- (b) Agency support costs are the costs of facilities, communications, personnel, fiscal, and other statewide and agency-wide services. The agency support cost multiplier (ASCM) used shall be the agency indirect rate approved by the agency's federal cognizant agency (which, as of July 1, 1993, was the United States Department of the Interior) for each fiscal year.
- (c) Program support costs are the costs of administrative time spent by site managers and other staff who work directly on sites and a portion of the cost of management, clerical, policy, computer, financial, and other support provided by other program staff to site managers and other staff who work directly on sites. Other activities of the toxics cleanup program not included in program support costs include, for example, community relations not related to a specific site, policy development, and a portion of the cost of nonsite management, clerical, policy, computer, financial, and other support

staff. The program support cost multiplier (PSCM) used shall be calculated by dividing actual program support costs by the direct staff costs of all hours charged to site related work. This multiplier shall be evaluated at least biennially and any changes published in at least two publications of the *Contaminated Site Register*. The calculation and source documents used in any revision shall be audited by either the state auditor's office or a private accounting firm. Audit results shall be available for public review. This multiplier shall not exceed 1.0 (one).

- (3) **Request for payment.** When the department requests payment of remedial action costs it shall provide an itemized statement documenting the costs incurred.
- (4) **Interest charges.** A charge of 12 percent interest (annual percentage rate, compounded monthly) shall accrue on all remedial action costs not paid within 90 days of the billing date, or within another longer time period designated by the department.
- (5) **Natural resource damages.** Nothing in this section shall affect the authority of the department and the office of attorney general to recover natural resource damages.
- (6) **Independent remedial actions.**
 - (a) The department may collect, from persons requesting a site-specific technical consultation under WAC [173-340-515](#), the costs incurred by the department in providing such advice and assistance.
 - (b) For situations where the department has decided to collect its costs, a refundable deposit of a reasonable amount will be required. The department's hourly costs shall be determined based on the method in subsection (2) of this section.
 - (c) The department's Toxics Cleanup Program manager or designee may make a discretionary, nonappealable decision on whether a person is eligible for a waiver of fees based on that person's ability to pay.
 - (d) The department shall waive collection of its costs, where appropriate, in providing technical assistance in support of an appropriate level of public participation or where the department's time in responding to the request is de minimis.
- (7) **Prepayment of costs.**
 - (a) Persons potentially liable under this chapter or seeking a prospective purchaser agreement may request the department's oversight of remedial actions through a prepayment agreement. The purpose of such an agreement is to enable department oversight of remedial actions at lower priority sites. The department shall make a determination that such an agreement is in the public interest. A prepayment agreement requires a person to pay the department's remedial action costs, in advance, allowing the department to increase staff for the unanticipated workload. Agreements may cover one or more facilities. Whether the department can respond favorably to a request for a prepayment agreement will depend, in part, on the department and attorney general receiving authorization for the staffing necessary to implement the agreement. Persons interested in such an agreement are encouraged to contact the

department early on to informally discuss the potential for using such an agreement at a facility.

- (b)** Prepayment agreements do not replace an order or decree but are preliminary to or work in conjunction with such documents. Persons entering into a prepayment agreement shall enter into good faith negotiations on an agreed order or consent decree governing remedial actions at the facility in accordance with the procedures described in WAC [173-340-520\(1\)](#) or [173-340-530\(2\)](#). Failure to successfully conclude such negotiations may result in the department withdrawing from the prepayment agreement or initiating enforcement action.

WAC 173-340-560 Mixed funding.

- (1) Introduction.** Under RCW [70A.305.190](#)(4)(a)(v), the department may provide public funds from the model toxics control capital account to a potentially liable person for the purpose of assisting with the payment of remedial action costs regardless of when incurred. This assistance can be provided in the form of a loan or a contribution, in cash or in kind. Any funding decision under this section is solely the responsibility of the director.
- (2) Applicability and request.**

 - (a)** Mixed funding shall be provided only to potentially liable persons whom the department has found to be eligible and who have entered into a consent decree with the department under the requirements of this chapter.
 - (b)** The consent decree shall identify remedial action tasks to be addressed by the mixed funding, costs to be borne by the potentially liable person, costs to be borne by the model toxics control capital account and terms of the agreement. In the case of loans, the consent decree shall also define any terms and conditions under which the potentially liable person receiving mixed funding has agreed to reimburse the model toxics control capital account.
 - (c)** The potentially liable person shall submit sufficient documentation to support its request for mixed funding.
- (3) Eligibility and mixed funding criteria.** The director shall make a determination, based upon specific criteria whether a proposal is eligible for funding. The only circumstances under which mixed funding can be approved by the department are when the funding will achieve both:

 - (a)** A substantially more expeditious or enhanced cleanup than would otherwise occur; and
 - (b)** The prevention or mitigation of unfair economic hardship. In considering this criterion the department shall consider the extent to which mixed funding will either:

 - (i)** Prevent or mitigate unfair economic hardship faced by the potentially liable person if the remedial action plan were to be implemented without public funding; or
 - (ii)** Achieve greater fairness with respect to the payment of remedial action costs between the potentially liable person entering into a consent decree with the department and any nonsettling potentially liable persons.
- (4) Funding decision.** The department may have informal discussions on mixed funding. If a potentially liable person is found to be eligible for mixed funding, the director shall make a determination regarding the amount of funding to be provided, if any. This shall be determined at the discretion of the director and is not subject to review. A determination of eligibility is not a funding commitment. Actual funding will depend on the availability of funds.
- (5)** The department may recover the amount of public funding spent on investigations and remedial actions from potentially liable persons who have not entered into a consent decree under this

chapter. For purposes of such cost recovery action, the amount in mixed funding attributed to the site shall be considered as remedial action costs paid by the department.

Part 6 – Public Participation and Tribal Engagement

WAC 173-340-600 Public notification and participation.

- (1) **Purpose.** Public participation is an integral part of ecology's responsibilities under chapter [70A.305](#) RCW, the Model Toxics Control Act. Ecology's goal is to provide the public with timely information and meaningful opportunities for participation that are commensurate with each site. Ecology will meet this goal through a public participation program that includes:
- (a) Site-specific information on ecology's website;
 - (b) A *Contaminated Site Register* and, if requested, site-specific electronic alerts of changes to site information; and
 - (c) For ecology-conducted and ecology-supervised remedial actions, early planning and development of site-specific public participation plans, public notice of proposed actions, and public meetings or hearings.
- (2) **Public notice.** Whenever public notice of a proposed action is required under this chapter, ecology will provide or require at least the following notice and opportunity to comment.
- (a) **Notification methods.**
- (i) **Website.** Ecology will make the proposed action publicly available on ecology's website under subsection (5) of this section;
 - (ii) **Electronic alert.** If requested, ecology will alert a person electronically of the proposed action's availability under subsection (6) of this section;
 - (iii) **Contaminated Site Register.** Ecology will provide notice of the proposed action's availability in the *Contaminated Site Register* under subsection (7) of this section.
 - (iv) **Persons requesting notice.** Written notice must be sent to persons who have made a timely request of ecology. A request for notice is timely if received before or during the public comment period for the current phase of remedial action at the site. However, the receipt of a request for notice does not require ecology to extend the comment period associated with the notice. Ecology may use an electronic alert under subsection (6) of this section to satisfy this requirement.
 - (v) **Persons residing within potentially affected vicinity.** Written notice must be sent to persons residing within the potentially affected vicinity of the proposed action. The potentially affected vicinity includes all property within and contiguous to the site and any other area that ecology determines to be directly affected by the proposed action.
 - (vi) **Appropriate news media.** Written notice of the proposed action must be sent to any news media that ecology determines to be appropriate. Ecology may consider how a news medium compares with the newspaper of largest circulation in terms of: Audience reached; timeliness; adequacy in conveying the particular information in the notice; cost; or other relevant factors.

- (vii) **Newspaper publication.** If required under chapter [70A.305](#) RCW or by ecology, written notice of the proposed action must be published in the newspaper of largest circulation in the city or county of the proposed action, by one or more of the following methods: Display ad; legal notice; or any other appropriate format, as determined by ecology.
 - (b) **Comment opportunity.**
 - (i) **Comment periods.** A public notice must indicate the public comment period on the proposed action. Unless otherwise specified in this chapter, the public comment period must be at least 30 days. Ecology may extend the public comment period, as appropriate.
 - (ii) **Public meetings.** During any comment period announced by a public notice issued under this chapter, if 10 or more persons request a public meeting on the subject of the public notice, ecology will hold a public meeting for the purpose of receiving comments.
 - (c) **Consolidating notice and comment opportunities.** Whenever reasonable, ecology will consolidate public notice required under this chapter with notice and comment opportunities required under other laws and regulations.
 - (d) **Site-specific risk assessment.** For public notices describing cleanup plans that use site-specific risk assessment or would restrict future site or resource use, the public notice must specifically identify the restrictions and invite comments on these elements of the cleanup plan. This notice must also include a statement indicating the availability of public participation grants.
- (3) **Additional opportunities.** To promote effective and meaningful public participation, ecology may provide or require public participation opportunities in addition to those specifically required under this chapter. In making this determination, ecology may consider:
 - (a) Known or potential risks to human health and the environment that could be avoided or reduced by providing information to the public;
 - (b) Public concerns about the site;
 - (c) The need to contact the public in order to gather information about the site;
 - (d) The extent to which the public's opportunity to affect subsequent ecology decisions at the site may be limited or foreclosed;
 - (e) The need to prevent disclosure of confidential, unverified, or enforcement-sensitive information;
 - (f) The routine nature of the contemplated remedial action;
 - (g) Interest in expediting remedial action at the site; and
 - (h) Any other factors as determined by ecology.

- (4) **Additional methods.** To provide information to the public, ecology may use or require any of the following methods in addition to those specifically required under this chapter:
- (a) Press releases;
 - (b) Fact sheets;
 - (c) Public meetings and transcription of such meetings;
 - (d) Publications;
 - (e) Personal contact by ecology employees;
 - (f) Posting signs at the site;
 - (g) Notice in the *Contaminated Site Register*;
 - (h) Notice through the internet;
 - (i) Any other methods as determined by ecology.
- (5) **Site-specific information on website.** For sites on the contaminated sites list and the no further action sites list, ecology will make at least the following site-specific information publicly available on ecology's website:
- (a) The date ecology or PLIA discovered or received notice of the release or, if this date is not known, the earliest date of administrative activity in ecology's site database;
 - (b) The site's current listing and remedial action status identified under WAC [173-340-330](#);
 - (c) The site's current hazard rankings identified under WAC [173-340-320](#);
 - (d) Any initial investigation report prepared under WAC [173-340-310](#);
 - (e) For ecology-conducted or ecology-supervised remedial actions:
 - (i) Any proposed action requiring public notice under this chapter; and
 - (ii) Any final cleanup action plan issued under WAC [173-340-380](#);
 - (f) For independent remedial actions:
 - (i) Any independent investigation, interim action, or cleanup action report required under WAC [173-340-515](#)(4) and received by ecology; and
 - (ii) The results of any ecology review of an independent remedial action, including any written opinion issued by ecology under WAC [173-340-515](#)(5);
 - (g) Whether institutional controls are currently required, and any document implementing, amending, or removing an institutional control under WAC [173-340-440](#);
 - (h) Whether periodic reviews are currently required, and any periodic review report prepared under WAC [173-340-420](#);

- (i) Instructions on how to sign up for the site-specific electronic alerts provided by ecology under subsection (6) of this section; and
 - (j) Any other information ecology considers appropriate for inclusion.
- (6) **Site-specific electronic alerts.** For sites on the contaminated sites list and the no further action sites list, ecology will provide a person, if requested, a site-specific electronic alert when the site information specified in subsection (5) of this section is added or changed on ecology's website.
 - (a) **Method.** Ecology will establish the means for providing the site-specific electronic alerts.
 - (b) **Instructions.** Ecology will provide instructions on how to sign up for the site-specific electronic alerts on ecology's website under subsection (5) of this section and in any public notice required under this chapter.
- (7) **Contaminated Site Register.** Ecology will maintain and regularly publish a *Contaminated Site Register*.
 - (a) **Publication.** Ecology will establish the method for publishing the *Contaminated Site Register*, which may include making it publicly available on ecology's website, electronically distributing it to interested persons, or any other method deemed appropriate by ecology.
 - (b) **Content.** Ecology will include notice of the following in the *Contaminated Site Register*:
 - (i) The availability of any legislative report required under chapter [70A.305](#) RCW related to remedial action;
 - (ii) Any rule-making notice requiring publication in the Washington State Register under chapter [34.05](#) RCW related to remedial action;
 - (iii) The availability of any ecology publication related to remedial action, including any new, revised, or rescinded interpretive or policy statement requiring notice in the Washington State Register under RCW [34.05.230](#);
 - (iv) Any proposed substantive change to the site hazard assessment and ranking process developed under WAC [173-340-320](#)(2);
 - (v) Any update to ecology's strategic plans or performance assessments required under WAC [173-340-340](#)(1) and (3);
 - (vi) Any additional resource allocation factors specified by the legislature or ecology under WAC [173-340-340](#)(2)(d);
 - (vii) Any proposed model remedy developed under WAC [173-340-390](#)(2);
 - (viii) Any change to the program support cost multiplier calculated under WAC [173-340-550](#)(2)(c);
 - (ix) Any change to the list of ecology-approved sampling and analysis methods maintained under WAC [173-340-830](#)(4)(a);

- (x) Any initial investigation determination under WAC [173-340-310](#)(6) resulting in the listing of a site on either the contaminated sites list or the no further action sites list. The notice must include instructions on how to sign up for electronic alerts about the site under subsection (6) of this section;
 - (xi) For ecology-conducted or ecology-supervised remedial actions:
 - (A) Any initiation of a negotiation for a consent decree under WAC [173-340-520](#) or a discussion for an agreed order under WAC [173-340-530](#);
 - (B) Any proposed action requiring public notice under this chapter, including any related public meeting or hearing; and
 - (C) Any issuance of a final cleanup action plan under WAC [173-340-380](#);
 - (xii) For independent remedial actions:
 - (A) Any notice of a planned independent interim action or cleanup action submitted to ecology in anticipation of a private right of action under WAC [173-340-545](#)(3)(a); and
 - (B) Any proposed area-wide groundwater conditional point of compliance under WAC [173-340-720](#)(8)(d)(iii)(D); and
 - (xiii) Any other notice that ecology considers appropriate for inclusion.
- (8) **Evaluation of public participation needs.** For ecology-conducted and ecology-supervised remedial actions, ecology will evaluate public participation needs at the site. The evaluation must include an identification of the potentially affected vicinity for the remedial action. For sites where site-specific risk assessment is used, ecology will also evaluate public interest in the site, significant public concerns regarding future site use, and public values to be addressed through the public participation plan.
- (9) **Public participation plans.** For ecology-conducted and ecology-supervised remedial actions, except emergency remedial actions, ecology will ensure that a public participation plan is developed and implemented.
- (a) **Purpose and scope.** A public participation plan is intended to encourage a coordinated and effective public involvement tailored to the public's needs at a site, and facilitate equitable participation by the public. The scope of the plan must be commensurate with:
 - (i) The threats posed by the site to human health and the environment, including likely vulnerable populations and overburdened communities;
 - (ii) The level of public concern regarding the threats; and
 - (iii) The nature of the proposed remedial actions to address the threats.

- (b) Early planning encouraged.** In order to develop an appropriate plan, ecology or a potentially liable person or prospective purchaser (if submitting a plan to ecology) should engage in an early planning process to assess the public participation needs at the site, including the needs of likely vulnerable populations and overburdened communities. This process may include identifying and conferring with individuals, community groups, indigenous peoples, local governments, public agencies, or any other organizations that may have an interest in or knowledge of the site.
- (c) Development.** Ecology will develop the plan, or work with a potentially liable person or prospective purchaser to develop the plan.

 - (i)** If a plan already exists for the site, ecology will consider whether the existing plan is still appropriate or whether the plan should be amended. For example, a plan originally developed to address a remedial investigation/feasibility study may need to be amended to address implementation phases.
 - (ii)** Unless otherwise directed by ecology, a potentially liable person or prospective purchaser requesting an agreed order under WAC [173-340-530](#) or a consent decree under WAC [173-340-520](#) must submit a proposed plan as part of its request. If a plan already exists for the site, the potentially liable person or prospective purchaser may either resubmit the existing plan with any proposed amendments or submit an entirely new proposed plan. The proposed plan may be revised during the course of discussions on the agreed order or negotiations on the consent decree. The final plan may become part of the agreed order or consent decree.
- (d) Contents.** A public participation plan must include the following:

 - (i)** Applicable public notice requirements and how these will be met, including:

 - (A)** When public notice will occur;
 - (B)** The length of the comment periods accompanying each notice; and
 - (C)** The potentially affected vicinity and any other areas to be provided notice, to the extent known;
 - (ii)** Information repositories. The plan should identify at least one location where the public can review information about the remedial action. Multiple locations may be appropriate;
 - (iii)** Methods of identifying the public's concerns. Such methods may include interviews, questionnaires, meetings, contacts with community groups or other organizations that have an interest in the site, or establishing citizen advisory groups for sites;
 - (iv)** Methods of addressing the public's concerns and conveying information to the public. These may include any of the methods listed in subsection (4) of this section;

- (v) Coordination of public participation requirements. The plan should identify any public participation requirements of other applicable federal, state or local laws, and address how such requirements can be coordinated. For example, if the federal cleanup law applies to the proposed action, the plan should explain how the federal cleanup law and this chapter's public comment periods will be coordinated;
 - (vi) Amendments to the plan. The plan should outline the process for amending the plan. Any amendments must be approved by ecology; and
 - (vii) Any other elements that ecology determines to be appropriate for inclusion in the final public participation plan.
- (e) **Site-specific risk assessment.** If the variables proposed to be modified in a site-specific risk assessment or alternative reasonable maximum exposure scenario may affect the significant public concerns regarding future land uses and exposure scenarios, then ecology will assure appropriate public involvement and comment opportunities will occur as identified in the public participation plan.
- (f) **Implementation.** Ecology retains approval authority over the actions taken by a potentially liable person or prospective purchaser to implement the plan.
- (10) **Consent decrees.** Ecology will provide or require the following notice and comment opportunities when negotiating a consent decree under WAC [173-340-520](#).
 - (a) **Public participation plan.** Ecology will develop, or require the development of, a public participation plan in accordance with subsection (9) of this section.
 - (b) **Notice of negotiations.** When ecology decides to proceed with negotiations for a consent decree, ecology will notify the public in the *Contaminated Site Register*. This notice must include the name of the site, a general description of the subject of the decree, and the deadlines for negotiations.
 - (c) **Public notice of proposed decree.** Ecology will provide or require public notice of a proposed consent decree in accordance with subsection (2) of this section. The public notice may be consolidated with public notice of other documents under this chapter, such as a cleanup action plan, or notice required under other laws.
 - (i) **Timing.** The public must be provided with notice and an opportunity to comment on a proposed consent decree before ecology agrees to a settlement.
 - (ii) **Content.** Notice of a proposed consent decree must briefly:
 - (A) Identify and generally describe the site;
 - (B) Identify the persons who are parties to the consent decree;
 - (C) Generally describe the remedial action proposed in the proposed consent decree, including institutional controls and permit exemptions authorized under RCW [70A.305.090](#);

- (D) Indicate the place, date, and time of any planned public hearing on the proposed consent decree. If a public hearing is not planned, specify the procedures for requesting one and indicate that ecology will only hold a public hearing if at least 10 persons request one; and
 - (E) Invite the public to comment at a public hearing (if applicable) or in writing.
 - (iii) **Comment opportunity.** Ecology will provide the public at least 30 days from the date the notice is issued to comment on the proposed consent decree.
 - (iv) **Public hearing.** Ecology will hold a public hearing on the proposed consent decree for the purpose of providing the public with an opportunity to comment whenever ten or more persons request a public hearing or whenever ecology determines a public hearing is necessary.
 - (d) **Public notice of substantial changes to proposed decree.** If the state and the potentially liable person or prospective purchaser agree to substantial changes to a proposed consent decree, ecology will provide or require additional public notice of the proposed changes in accordance with subsection (2) of this section.
- (11) **Agreed orders.** Ecology will provide or require the following notice and comment opportunities for an agreed order under WAC [173-340-530](#).
 - (a) **Public participation plan.** Ecology will develop, or require the development of, a public participation plan in accordance with subsection (9) of this section.
 - (b) **Notice of discussions.** When ecology decides to proceed with discussions for an agreed order, ecology will notify the public in the *Contaminated Site Register*. This notice must include the name of the site, a general description of the subject of the order, and the deadlines for discussions.
 - (c) **Public notice of proposed order.** Ecology will provide or require public notice of a proposed agreed order in accordance with subsection (2) of this section. The public notice may be consolidated with public notice of other documents under this chapter, such as a cleanup action plan, or notice required under other laws.
 - (i) **Timing.** Ecology will provide or require notice of a proposed agreed order before or concurrent with the issuance of the agreed order. The notice must be provided no later than three days after ecology issues the agreed order. Unless ecology determines that it is not in the public interest, an agreed order may become effective before the comment period ends.
 - (ii) **Content.** Notice of a proposed agreed order must briefly:
 - (A) Identify and generally describe the site;
 - (B) Identify the persons who are parties to the agreed order;

- (C) Generally describe the remedial action proposed in the proposed agreed order, including institutional controls and permit exemptions authorized under RCW [70A.305.090](#); and
 - (D) Invite the public to comment on the proposed agreed order.
 - (iii) **Comment opportunity.** Ecology will provide the public at least 30 days from the date the notice is issued to comment on a proposed agreed order.
 - (iv) **Public hearing.** Ecology may hold a public meeting or hearing on a proposed agreed order if it determines that it is in the public interest.
 - (d) **Public notice of substantial changes to proposed order.** If ecology and the potentially liable person or prospective purchaser agree to substantial changes to a proposed agreed order, ecology will provide or require additional public notice of the proposed changes in accordance with subsection (2) of this section.
- (12) **Enforcement orders.** Ecology will provide the public with the following notice and comment opportunities when preparing an enforcement order under WAC [173-340-540](#).
 - (a) **Public participation plan.** Ecology will develop a public participation plan in accordance with subsection (9) of this section.
 - (b) **Public notice of proposed order.** Ecology will provide public notice of a proposed enforcement order in accordance with subsection (2) of this section. The public notice may be consolidated with notice of other documents under this chapter, such as a cleanup action plan, or under other laws.
 - (i) **Timing.** Ecology will provide notice of a proposed enforcement order before or concurrent with the issuance of the order.
 - (A) Except in emergencies, ecology will provide the notice no later than three days after ecology issues the enforcement order.
 - (B) In emergencies, ecology will provide the notice no later than 10 days after ecology issues the enforcement order.
 - (ii) **Contents.** Notice of a proposed enforcement order must briefly:
 - (A) Identify and generally describe the site;
 - (B) Identify the persons who are parties to the enforcement order;
 - (C) Generally describe the terms of the proposed enforcement order, including institutional controls and permit exemptions authorized under RCW [70A.305.090](#); and
 - (D) Invite the public to comment on the proposed enforcement order.
 - (iii) **Comment opportunity.** Ecology will provide the public at least 30 days from the date ecology issues the notice to comment on a proposed enforcement order.

- (c) **Public notice of substantial changes to proposed order.** Ecology may amend the enforcement order based on public comments. If ecology substantially changes the enforcement order, ecology will provide additional public notice of the proposed changes in accordance with subsection (2) of this section.
- (13) **Remedial investigation/feasibility study.** For ecology-conducted and ecology-supervised remedial actions, ecology will require or provide the public with the following notice and comment opportunities during a remedial investigation and/or feasibility study conducted under WAC [173-340-350](#) and/or [173-340-351](#).
 - (a) **Public notice of work plan.** For ecology-conducted remedial actions, ecology will provide public notice of a remedial investigation work plan in accordance with subsection (2) of this section. Ecology will provide the public at least 30 days from the date ecology issues the notice to comment on the plan.
 - (b) **Public notice of report.** Ecology will provide or require public notice of a remedial investigation and/or feasibility study report in accordance with subsection (2) of this section. The public notice may be consolidated with public notice of a draft cleanup action plan. When deciding whether to consolidate public notice, ecology will consider the factors in subsection (3) of this section.
 - (i) **Content.** Notice of a remedial investigation and/or feasibility study report must briefly:
 - (A) Describe the site;
 - (B) Describe the remedial investigation and/or feasibility study results;
 - (C) If available, identify ecology's proposed cleanup action and provide an explanation for its selection; and
 - (D) Invite public comment on the report.
 - (ii) **Comment opportunity.** Ecology will provide the public at least 30 days from the date the notice is issued to comment on a remedial investigation and/or feasibility study report.
- (14) **Selection of cleanup actions.** For ecology-conducted and ecology-supervised remedial actions, ecology will require or provide the public with the following notice and comment opportunities when selecting a cleanup action under WAC [173-340-380](#).
 - (a) **Public notice of draft cleanup action plan.** When issuing a draft cleanup action plan, ecology will provide or require public notice of the plan in accordance with subsection (2) of this section. The public notice may be consolidated with public notice of a remedial investigation/feasibility study report or a proposed order or decree.
 - (i) **Content.** Notice of a draft cleanup action plan must briefly:
 - (A) Describe the site;

- (B) Identify ecology's proposed cleanup action, including any model remedy, and provide an explanation for its selection; and
 - (C) Invite public comment on the proposed cleanup action.
 - (ii) **Comment opportunity.** Ecology will provide the public at least 30 days from the date the notice is issued to comment on a proposed cleanup action.
 - (b) **Notice of final cleanup action plan.** When issuing a final cleanup action plan, ecology will:
 - (i) Make the plan publicly available on ecology's website under subsection (5) of this section;
 - (ii) If requested, notify a person electronically of the plan's availability under subsection (6) of this section; and
 - (iii) Provide notice of the plan's availability and a brief description of the selected cleanup action in the *Contaminated Site Register* under subsection (7) of this section.
- (15) **Cleanup action implementation.** For ecology-conducted and ecology-supervised remedial actions, ecology will require or provide the public with the following notice and comment opportunities during cleanup action implementation under WAC [173-340-400](#).
- (a) **Public notice of engineering design report.** For ecology-conducted remedial actions, ecology will provide public notice of an engineering design report in accordance with subsection (2) of this section. Ecology will provide the public at least 30 days from the date ecology issues the notice to comment on the report.
 - (b) **Public notice of plans implementing cleanup action.** Ecology will provide or require public notice on any plans prepared under WAC [173-340-400](#) that represent a substantial change from the cleanup action plan. The public notice must be provided in accordance with subsection (2) of this section. Ecology will provide the public at least 30 days from the date the notice is issued to comment on the plan.
- (16) **Interim actions.** For ecology-conducted and ecology-supervised remedial actions, ecology will provide or require public notice of a draft interim action plan prepared under WAC [173-340-430](#). The public notice must be provided in accordance with subsection (2) of this section. The public notice may be consolidated with public notice of a proposed order or decree.
- (a) **Content.** Notice of a draft interim action plan must briefly:
 - (i) Describe the site;
 - (ii) Identify the proposed interim action, including institutional controls and the permit exemptions authorized under RCW [70A.305.090](#);
 - (iii) Identify the likely or planned schedule for the proposed interim action;
 - (iv) Reference any planning documents prepared for the proposed interim action;

- (v) Identify ecology staff who may be contacted for further information; and
 - (vi) Invite public comment on the proposed interim action.
- (b) **Comment opportunity.** Ecology will provide the public at least 30 days from the date the notice is issued to comment on a proposed interim action.
- (17) **Removing sites from contaminated sites list.** For ecology-conducted and ecology-supervised remedial actions, ecology will provide public notice before removing a site from the contaminated sites list under WAC [173-340-330](#). The public notice must be provided in accordance with subsection (2) of this section. Ecology will provide the public at least 30 days from the date ecology issues the notice to comment on the proposed removal from the contaminated sites list.
- (18) **Periodic reviews.** For ecology-conducted and ecology-supervised remedial actions, ecology will provide public notice of a periodic review report prepared under WAC [173-340-420](#). The public notice must be provided in accordance with subsection (2) of this section. Ecology will provide the public at least 30 days from the date ecology issues the notice to comment on a periodic review.
- (19) **Institutional controls.** For ecology-conducted and ecology-supervised remedial actions, before amending or removing an institutional control required under WAC [173-340-440](#), ecology will provide or require public notice on the proposal in accordance with subsection (2) of this section. Ecology will provide the public at least thirty days from the date the notice is issued to comment on the proposal.
- (20) **Independent remedial actions.**
 - (a) For independent remedial actions, ecology will notify the public of the following using the methods specified in subsections (5) and (6) of this section:
 - (i) Any change to the site's listing or remedial action status identified under WAC [173-340-330](#);
 - (ii) Any change to the site's hazard rankings identified under WAC [173-340-320](#);
 - (iii) Any initial investigation report prepared under WAC [173-340-310](#);
 - (iv) Any independent investigation, interim action, or cleanup action report required under WAC [173-340-515](#)(4) and received by ecology;
 - (v) The results of any ecology review of an independent remedial action, including any written opinion issued by ecology under WAC [173-340-515](#)(5);
 - (vi) Any periodic review report prepared under WAC [173-340-420](#); and
 - (vii) Any document implementing, amending, or removing an institutional control under WAC [173-340-440](#).
 - (b) Ecology will provide notice of the following independent remedial actions in the *Contaminated Site Register* under subsection (7) of this section:

- (i) Any notice of a planned independent interim action or cleanup action submitted to ecology in anticipation of a private right of action under WAC [173-340-545](#)(3)(a); and
 - (ii) Any proposed area-wide groundwater conditional point of compliance under WAC [173-340-720](#)(8)(d)(iii)(D).
 - (c) For independent remedial actions, ecology may provide public notice of any proposed action for which public notice is required under this chapter for an ecology-conducted or ecology-supervised remedial action.
- (21) **Public participation grants.** RCW [70A.305.180](#)(4) requires funds be allocated for public participation grants to persons, including groups, who may be adversely affected by a release or threatened release of a hazardous substance. Persons interested in applying for such grants are encouraged to contact ecology to learn about available funding, grant application procedures, and deadlines. See chapter [173-321](#) WAC for additional information on public participation grants.
- (22) **Other requirements.** The following sections of this chapter specify additional requirements for providing notice or opportunity to comment.
- (a) WAC [173-340-310](#)(6)(e)(vi) contains focused notice requirements for emergency or interim actions required by ecology as a result of an initial investigation.
 - (b) WAC [173-340-320](#)(2)(b) contains notice and comment requirements for developing and updating the site hazard assessment and ranking process.
 - (c) WAC [173-340-330](#)(9)(a) and [173-340-335](#)(5)(a) contain requirements for making the contaminated sites list and the no further action sites list publicly available.
 - (d) WAC [173-340-340](#)(4)(a) contains requirements for making ecology's strategic plans and performance assessments publicly available.
 - (e) WAC [173-340-390](#)(2)(c) contains notice and comment requirements for developing model remedies.
 - (f) WAC [173-340-440](#)(10) contains local government consultation requirements for proposing institutional controls.
 - (g) WAC [173-340-545](#)(3) contains public notice requirements for private rights of action.
 - (h) WAC [173-340-720](#)(6)(c)(A) contains focused notice and comment requirements for establishing site-specific nonpotable groundwater cleanup levels.
 - (i) WAC [173-340-720](#)(8)(d) contains focused notice and comment requirements for establishing off-property conditional points of compliance.

WAC 173-340-620 Tribal engagement.

- (1) Purpose.** Tribal engagement is an integral part of ecology's responsibilities under chapter [70A.305](#) RCW, the Model Toxics Control Act. Ecology's goal is to provide Indian tribes with timely information, effective communication, continuous opportunities for collaboration and, when necessary, government-to-government consultation, as appropriate for each site.
- (2) Applicability.** This section applies to ecology-conducted and ecology-supervised remedial actions affecting Indian tribes' rights or interests.
- (3) Tribal engagement plan.**
 - (a)** Ecology will develop a site tribal engagement plan that identifies Indian tribes that may be adversely affected by the site, opportunities for government-to-government collaboration and consultation, and protocols for communication.
 - (b)** Ecology will seek to initiate meaningful engagement with affected Indian tribes before initiating a remedial investigation or an interim action at a site. Ecology will maintain meaningful engagement with Indian tribes throughout the cleanup process.
- (4) Relationship with public participation.** Engagement of Indian tribes under this section must be in addition to and independent of any public participation process under this chapter or applicable laws.

Part 7 – Cleanup Standards

WAC 173-340-700 Overview of cleanup standards.

- (1) **Purpose.** This section provides an overview of the methods for establishing cleanup standards that apply to a release or threatened release of a hazardous substance at a site. If there are any inconsistencies between this section and any specifically referenced section, the referenced section shall govern.
- (2) **Explanation of term "cleanup level."** A cleanup level is the concentration of a hazardous substance in soil, water, air or sediment that is determined to be protective of human health and the environment under specified exposure conditions. Cleanup levels, in combination with points of compliance, typically define the area or volume of soil, water, air or sediment at a site that must be addressed by the cleanup action.
- (3) **Explanation of term "cleanup standards."** Cleanup standards consist of the following:

 - (a) Cleanup levels for hazardous substances present at the site;
 - (b) The location where these cleanup levels must be met (point of compliance); and
 - (c) Other regulatory requirements that apply to the site because of the type of action and/or location of the site ("applicable state and federal laws").
- (4) **Relationship between cleanup standards and cleanup actions.**

 - (a) Cleanup standards are identified for the particular hazardous substances at a site and the specific areas or pathways, such as land or water, where humans and the environment can become exposed to these substances. Part 7 of this chapter provides uniform methods statewide for identifying cleanup standards and requires that all cleanups under the act meet these standards. The actual degree of cleanup may vary from site to site and will be determined by the cleanup action alternative selected under WAC [173-340-350](#) through [173-340-390](#).
 - (b) For most sites, there are several cleanup technologies or combinations of cleanup technologies ("cleanup action alternatives") that may be used to comply with cleanup standards at individual sites. Other parts of this chapter govern the process for planning and deciding on the cleanup action to be taken at a site. This may include establishing "remediation levels," or the concentrations of hazardous substances above which a particular cleanup technology will be applied. See WAC [173-340-350](#) through [173-340-390](#). WAC [173-340-355](#) contains detailed information on establishing remediation levels. WAC [173-340-410](#) specifies the monitoring required to ensure that the remedy is effective.
 - (c) Where a cleanup action involves containment of soils with hazardous substances above cleanup levels, the cleanup action may be determined to comply with cleanup standards, provided the compliance monitoring program is designed to ensure the long-term integrity of the containment system, and the other requirements for containment in this chapter are met.
- (5) **Methods for setting cleanup levels.** The first step in setting cleanup levels is to identify the nature of the contamination, the potentially contaminated media, the current and potential

pathways of exposure, the current and potential receptors, and the current and potential land and resource uses. A conceptual site model may be developed as part of this scoping process. Cleanup levels may then be established for each media. Both the conceptual site model and cleanup levels may be refined as additional information is collected during the remedial investigation/feasibility study. See WAC [173-340-708](#)(3) for additional information on how to determine current and potential future land and resource uses for the conceptual site model. These rules provide three approaches for establishing cleanup levels:

- (a) **Method A: ARARs and Tables.** On some sites, the cleanup action may be routine (WAC [173-340-200](#)) or may involve relatively few hazardous substances. Under Method A, cleanup levels at these sites are set at concentrations at least as stringent as concentrations specified in applicable state and federal laws (ARARs) and Tables 720-1, 740-1, and 745-1 of this chapter.

Method A cleanup levels for hazardous substances that are deemed indicator hazardous substances at the site under WAC [173-340-708](#)(2) and are not addressed under applicable state and federal laws or Tables 720-1, 740-1, and 745-1 must be established at concentrations which do not exceed the natural background concentration or the practical quantitation limit, whichever is higher.

For soil contamination, the potential impact of hazardous substances on terrestrial ecological receptors must be evaluated under WAC [173-340-7490](#) through [173-340-7494](#). Specifically, either an exclusion must be established for the site under WAC [173-340-7491](#) or a terrestrial ecological evaluation must be conducted under WAC [173-340-7492](#) or [173-340-7493](#). The terrestrial ecological evaluation may result in a more stringent Method A soil cleanup level than is required to protect human health.

Except where institutional controls are required by WAC [173-340-440](#)(4), site cleanups that achieve Method A cleanup levels may be used without future restrictions on the property due to residual levels of contamination.

- (b) **Method B: Universal method.** Method B is the universal method for determining cleanup levels for all media at all sites. Under Method B, cleanup levels for individual hazardous substances are established using applicable state and federal laws and the risk equations and other requirements specified in WAC [173-340-720](#) through [173-340-760](#).

Method B is divided into two tiers: Standard and modified. Standard Method B uses generic default assumptions to calculate cleanup levels. Modified Method B provides for the use of chemical-specific or site-specific information to change selected default assumptions, within the limitations allowed in WAC [173-340-708](#). Modified Method B may be used to establish cleanup levels.

Modified Method B may also be used in a quantitative risk assessment to help assess the protectiveness of a remedy by modifying input parameters as described in WAC [173-340-720](#) through [173-340-750](#) or by using other modifications that meet the requirements of WAC [173-340-702](#) and [173-340-708](#). See WAC [173-340-355](#) and

[173-340-357](#) for more information on remediation levels and quantitative risk assessment.

For individual carcinogens, both standard and modified Method B cleanup levels are based upon the upper bound of the estimated excess lifetime cancer risk of one in 1,000,000 (1×10^{-6}).

For individual noncarcinogenic substances, both standard and modified Method B cleanup levels are set at concentrations which are anticipated to result in no acute or chronic toxic effects on human health (that is, hazard quotient of one or less) and no significant adverse effects on the propagation of aquatic and terrestrial organisms.

Where a site involves multiple hazardous substances and/or multiple pathways of exposure, then standard and modified Method B cleanup levels for individual substances must be adjusted downward for additive health effects in accordance with the procedures in WAC [173-340-708](#) if the total excess lifetime cancer risk for a site exceeds one in 100,000 (1×10^{-5}) or the hazard index for substances with similar noncarcinogenic toxic effects exceeds one.

For soil contamination, the potential impact of hazardous substances on terrestrial ecological receptors must be evaluated under WAC [173-340-7490](#) through [173-340-7494](#). Specifically, either an exclusion must be established for the site under WAC [173-340-7491](#) or a terrestrial ecological evaluation must be conducted under WAC [173-340-7492](#) or [173-340-7493](#). The terrestrial ecological evaluation may result in a more stringent Method B soil cleanup level for the site than is required to protect human health.

Except where institutional controls are required by WAC [173-340-440](#)(4), site cleanups that achieve Method B cleanup levels may be used without future restrictions on the property due to residual levels of contamination.

- (c) **Method C: Conditional method.** Compliance with cleanup levels developed under Method A or B may be impossible to achieve or may cause greater environmental harm. In those situations, Method C cleanup levels for individual hazardous substances may be established for surface water, groundwater, and air. Method C industrial soil and air cleanup levels may also be established at industrial properties that meet the criteria in WAC [173-340-745](#).

Under Method C, cleanup levels for individual hazardous substances are established using applicable state and federal laws and the risk equations and other requirements specified in WAC [173-340-720](#) through [173-340-760](#). Method C is divided into two tiers: Standard and modified. Standard Method C uses generic default assumptions to calculate cleanup levels. Modified Method C provides for the use of chemical-specific or site-specific information to change selected default assumptions, within the limitations allowed in WAC [173-340-708](#). Modified Method C may be used to establish cleanup levels.

Modified Method C may also be used in a quantitative risk assessment to help assess the protectiveness of a remedy by modifying input parameters as described in WAC [173-340-720](#) through [173-340-750](#) or by using other modifications that meet the requirements of WAC [173-340-702](#) and [173-340-708](#). See WAC [173-340-355](#) and [173-340-357](#) for more information on remediation levels and quantitative risk assessment.

For individual carcinogens, both standard and modified Method C cleanup levels are based upon the upper bound of the estimated lifetime cancer risk of one in 100,000 (1×10^{-5}).

For individual noncarcinogenic substances, both standard and modified Method C cleanup levels are set at concentrations which are anticipated to result in no acute or chronic toxic effects on human health (that is, hazard quotient of one or less) and no significant adverse effects on the protection and propagation of aquatic and terrestrial organisms.

Where a site involves multiple hazardous substances and/or multiple pathways of exposure, then both standard and modified Method C cleanup levels for individual substances must be adjusted downward for additive health effects in accordance with the procedures in WAC [173-340-708](#) if the total excess lifetime cancer risk for a site exceeds one in 100,000 (1×10^{-5}) or the hazard index for substances with similar noncarcinogenic toxic effects exceeds one.

For soil contamination, the potential impact of hazardous substances on terrestrial ecological receptors must be evaluated under WAC [173-340-7490](#) through [173-340-7494](#). Specifically, either an exclusion must be established for the site under WAC [173-340-7491](#) or a terrestrial ecological evaluation must be conducted under WAC [173-340-7492](#) or [173-340-7493](#). The terrestrial ecological evaluation may result in a more stringent Method C soil cleanup level for the site than is required to protect human health.

Site cleanups establishing Method C cleanup levels must have restrictions placed on the property (institutional controls) to ensure future protection of human health and the environment.

- (6) Requirements for setting cleanup levels.** Several requirements apply to cleanups under any of the three methods. Some of these requirements, such as the identification of applicable state and federal laws, describe analyses used along with Methods A, B or C in order to set cleanup levels for particular substances at a site. Others describe the technical procedures to be used.
- (a) Applicable state and federal laws.** RCW [70A.305.030](#)(2)(e) requires the cleanup standards in these rules to be "at least as stringent as all applicable state and federal laws." In addition to establishing minimum requirements for cleanup standards, applicable state and federal laws may also impose certain technical and procedural requirements for performing cleanup actions. These requirements are described in WAC [173-340-710](#) and are similar to the "ARAR" (applicable, relevant and appropriate

requirements) approach of the federal superfund law. Sites that are cleaned up under an order or decree may be exempt from obtaining a permit under certain other laws but they must still meet the substantive requirements of these other laws. (See WAC [173-340-710](#)(9).)

- (b) **Cross-media contamination.** In some situations, migration of hazardous substances from one medium may cause contamination in a second media. For example, the release of hazardous substances in soil may cause groundwater contamination. Under Methods A, B, and C, cleanup levels must be established at concentrations that prevent violations of cleanup levels for other media.
 - (c) **Risk assessment procedures.** The analyses performed under Methods B and C use several default assumptions for defining cleanup levels for carcinogens and noncarcinogens. The individual default assumptions and procedures for modifying these assumptions based on site-specific information are specified in WAC [173-340-708](#) and [173-340-720](#) through [173-340-750](#). WAC [173-340-708](#) also provides rules for use of indicator hazardous substances. The standards for review of new scientific information are described in WAC [173-340-702](#)(14), (15) and (16).
 - (d) **Natural background and analytical considerations.** In some cases, cleanup levels calculated using the methods specified in this chapter are less than natural background levels or levels that can be reliably measured. In those situations, the cleanup level shall be established at a concentration equal to the practical quantitation limit or natural background concentration, whichever is higher. See WAC [173-340-707](#) and [173-340-709](#) for additional information.
- (7) **Procedures for demonstrating compliance with cleanup standards.** Setting cleanup standards also involves being able to demonstrate that they have been met. This involves specifying where on the site the cleanup levels must be met ("points of compliance"), how long it takes for a site to meet cleanup levels ("restoration time frame"), and conducting sufficient monitoring to demonstrate that the cleanup standards have been met and will continue to be met in the future. The provisions for establishing points of compliance are in WAC [173-340-720](#) through [173-340-750](#). The provisions for establishing restoration time frames are in WAC [173-340-360](#). The compliance monitoring plan prepared under WAC [173-340-410](#) specifies precisely how these are measured for each site. At sites where remediation levels are used, the compliance monitoring plan will also need to describe the performance monitoring to be conducted to demonstrate the remediation levels have been achieved.
- (8) **Specific procedures for setting cleanup levels at petroleum contaminated sites.** In addition to the other requirements in this section, this chapter provides for the following specific procedures to establish cleanup levels at sites where there has been a release of total petroleum hydrocarbons (TPH) and hazardous substances associated with a release of TPH.
- (a) For soil contamination, the potential impact of TPH on terrestrial ecological receptors must be evaluated under WAC [173-340-7490](#) through [173-340-7494](#). Specifically, either an exclusion must be established for the site under WAC [173-340-7491](#) or a terrestrial ecological evaluation must be conducted under WAC [173-340-7492](#) or [173-340-7493](#).

The terrestrial ecological evaluation may result in a more stringent soil cleanup level than is required to protect human health.

- (b) It is necessary to analyze for and evaluate certain carcinogenic and noncarcinogenic hazardous substances that may be associated with a release of TPH. These are identified in Table 830-1. In cases where the cleanup level for one or more of these associated hazardous substances is exceeded but the TPH cleanup level is not, the cleanup level shall be based on the associated hazardous substance.

(i) **Method A.** Method A may be used to establish cleanup levels for TPH and associated hazardous substances at qualifying sites (see WAC [173-340-704](#)). At these sites, the presence, location and concentration of TPH may be established by using the NWTPH method described in the "*Analytical Methods for Petroleum Hydrocarbons*," publication number [97-602](#), dated June 1997. The NWTPH method is a simplified, and relatively inexpensive, analytical method for evaluating TPH. Method A cleanup levels have been determined for four common petroleum mixtures: Gasoline range organics (GRO), diesel range organics (DRO), heavy oils, and electrical insulating mineral oil, as well as many hazardous substances that may be associated with the TPH. A site owner may decide to use Method A for some substances or media and Method B or C for others, depending upon site conditions and qualifications.

(ii) **Method B and Method C tiered approach.** This chapter provides for a three-tiered approach for establishing Method B and Method C cleanup levels at sites that involve a release of TPH. These tiers are not required to be approached sequentially (that is, the process may be started at any tier). The tiered process allows one to calculate different cleanup levels for TPH and associated hazardous substances using progressively more complex and site-specific information, and also allows for basing the cleanup levels on the presence or absence of exposure pathways, determined as part of the conceptual site model. In establishing a TPH cleanup level using the tiered process, it is still necessary to comply with other requirements and procedures under WAC [173-340-700](#) through [173-340-750](#).

(A) **Conceptual site model.** The first step in setting Method B or C cleanup levels for TPH is to identify the nature of the contamination, the potentially contaminated media, the current and potential pathways of exposure, the current and potential receptors, and the current and potential land and resource uses. A conceptual site model should be developed as part of this scoping process. See WAC [173-340-708\(3\)](#) for additional information on how to determine current and potential future land and resource uses for the conceptual site model.

(B) **General description of the three tiers.**

(I) Tier 1 consists of the standard Method B and Method C formulas and requirements under WAC [173-340 720](#)

through [173-340-750](#) for each applicable pathway identified by the conceptual site model, including specific requirements set forth in those sections for petroleum mixtures.

- (II) Tier 2 consists of the site-specific use of modified Method B and Method C formulas and requirements under WAC [173-340 720](#) through [173-340-750](#) for each applicable exposure pathway identified by the conceptual site model; and inclusion and development of additional, site-specific exposure pathways not addressed in Method A or Tier 1.
 - (III) Tier 3 consists of the site-specific use of standard or modified Method B and Method C formulas and requirements for each applicable exposure pathway identified by the conceptual site model and the use of new scientific information to establish a cleanup level as provided under WAC [173-340-702](#)(14), (15) and (16). It is considered a more complex evaluation in terms of technical sophistication (such as the use of new fate and transport models), data needs, cost and time.
 - (IV) A single tier may be used for all exposure pathways or more than one tier may be used when there are multiple exposure pathways.
- (C) **Fractionated approach.** Method B and Method C cleanup levels for TPH are determined using the fractionated analytical approach for petroleum as described in the "*Analytical Methods for Petroleum Hydrocarbons*," publication number [97-602](#), dated June 1997. This approach divides the TPH mixture into equivalent carbon numbers. Use of the fractionated approach requires testing or knowledge to define product composition as described under subsection (8)(b)(ii)(D) of this section ("Determination of product composition"). Cleanup levels are then calculated using reference doses that have been determined by the department for each fraction. Cleanup levels also need to consider the measured or predicted ability of the fractions to migrate from one medium to other media. Where multiple pathways of exposure for a particular medium are identified in the conceptual site model, the most stringent of the concentrations calculated for the various pathways becomes the cleanup level. For example, for soil contamination, if the direct contact and leaching pathways are potential exposure pathways, then a soil concentration would be calculated for each pathway and the lowest calculated concentration would become the cleanup level.
- (D) **Determination of product composition.** Product composition may be determined by analyzing each sample in accordance with the VPH/EPH method described in the "*Analytical Methods for Petroleum Hydrocarbons*," publication number [97-602](#), dated June 1997.

Alternatively, product composition may be determined by one of the following methods:

- (I) **Correlation.** Where WTPH or NWTPH methods described in Method 6 are used to collect and analyze the presence, location and concentration of TPH, knowledge of the fraction-specific composition of the petroleum released at the site may be based on analysis and correlation of a portion of the site samples with both the VPH/EPH and WTPH/NWTPH methods.
- (II) **Retrofitting.** Where WTPH or NWTPH methods were used to collect and analyze the presence, location and concentration of TPH before the effective date of this provision, knowledge of the fraction-specific composition of the petroleum released at the site may be based on the fraction-specific composition assumptions used by the department to calculate Method A cleanup levels, which the department shall publish in guidance. If the identity of the petroleum product released at the site is not known, or is a mixture of products, retrofitting under this provision shall be based on the composition that yields the lowest TPH cleanup level.
- (E) **Consultation with the department.** Because of the complexity of the development of site-specific Method B and Method C petroleum cleanup levels using the second or third tiers described above, or the use of correlated or retrofitted data, persons planning on using these methods are encouraged to contact the department to obtain appropriate technical guidance.

WAC 173-340-702 General policies.

- (1) **Purpose.** This section defines the general policies and principles that shall be followed when establishing and implementing cleanup standards. This section shall be used in combination with other sections of this chapter.
- (2) **Policy on expediting cleanups.** Establishing cleanup standards and selecting an appropriate cleanup action involves many technical and public policy decisions. This chapter is intended to constrain the range of decisions made on individual sites to promote expeditious cleanups.
- (3) **Goal for cleanups.** The Model Toxics Control Act contains policies that state, in part, each person has a fundamental and inalienable right to a healthful environment and it is essential that sites be cleaned up well. Consistent with these policies, cleanup standards and cleanup actions selected under this chapter shall be established that provide conservative estimates of human health and environmental risks that protect susceptible individuals as well as the general population.
- (4) **Current and potential site and resource uses.** Cleanup standards and cleanup actions selected under this chapter shall be established that protect human health and the environment for current and potential future site and resource uses.
- (5) **Presumption for cleanup actions.** Cleanup actions that achieve cleanup levels at the applicable point of compliance under Methods A, B, or C (as applicable) and comply with applicable state and federal laws shall be presumed to be protective of human health and the environment.
- (6) **Cost considerations.** Except as provided for in applicable state and federal laws, cost shall not be a factor in determining what cleanup level is protective of human health and the environment. In addition, where specifically provided for in this chapter, cost may be appropriate for certain other determinations related to cleanup standards such as point of compliance. Cost shall, however, be considered when selecting an appropriate cleanup action.
- (7) **Cleanup action alternatives.** At most sites, there is more than one hazardous substance and more than one pathway for hazardous substances to get into the environment. For many sites there is more than one method of cleanup (cleanup action component) that could address each of these. When evaluating cleanup action alternatives it is appropriate to consider a representative range of cleanup action components that could address each of these as well as different combinations of these components to accomplish the overall site cleanup.
- (8) **Cross-media impacts.** The cleanup of a particular medium at a site will often affect other media at the site. These cross-media impacts shall be considered when establishing cleanup standards and selecting a cleanup action. Cleanup actions conducted under this chapter shall use appropriate engineering controls or other measures to minimize these cross-media impacts.
- (9) **Relationship between cleanup levels and cleanup actions.** In general, cleanup levels must be met throughout a site before the site will be considered clean. A cleanup action that leaves hazardous substances on a site in excess of cleanup levels may be acceptable as long as the cleanup action complies with WAC [173-340-350](#) through [173-340-390](#). However, these rules are intended to promote thorough cleanups rather than long-term partial cleanups or containment measures.

- (10) **Relationship to federal cleanup law.** When evaluating cleanup actions performed under the federal cleanup law, the department shall consider WAC [173-340-350](#), [173-340-351](#), [173-340-355](#), [173-340-357](#), [173-340-360](#), [173-340-370](#), [173-340-410](#), [173-340-420](#), [173-340-440](#), [173-340-450](#), [173-340-700](#) through [173-340-760](#), and [173-340-830](#) to be legally applicable requirements under Section 121(d) of the federal cleanup law.
- (11) **Reviewing and updating cleanup standards.** The department shall review and, as appropriate, update Part 7 of this chapter at least once every five years.
- (12) **Applicability of new cleanup levels.**
- (a) For cleanup actions conducted by the department, or under an order or decree, the department shall determine the cleanup level that applies to a release based on the rules and analytical methods in effect under this chapter at the time the department issues a final cleanup action plan for that release.
 - (b) In reviewing the adequacy of independent remedial actions, the department shall determine the cleanup level that applies to a release based on the rules and analytical methods in effect at the time the final cleanup action for that release began or in effect when the department reviews the cleanup action, whichever is less stringent.
 - (c) A release cleaned up under the cleanup levels determined in (a) or (b) of this subsection shall not be subject to further cleanup action due solely to subsequent amendments to the provisions in this chapter on cleanup levels or subsequent availability of more sensitive analytical methods, unless the department determines, on a case-by-case basis, that the previous cleanup action is no longer sufficiently protective of human health and the environment.
 - (d) Nothing in this subsection constitutes a settlement or release of liability under the Model Toxics Control Act.
- (13) **Institutional controls.** Institutional controls shall be required whenever any of the circumstances identified in WAC [173-340-440](#)(4) are present at a site.
- (14) **Burden of proof.** Any person responsible for undertaking a cleanup action under this chapter who proposes to:
- (a) Use a reasonable maximum exposure scenario other than the default provided for each medium;
 - (b) Use assumptions other than the default values provided for in this chapter;
 - (c) Establish a cleanup level under Method C; or
 - (d) Use a conditional point of compliance, shall have the burden of demonstrating to the department that requirements in this chapter have been met to ensure protection of human health and the environment. The department shall only approve of such proposals when it determines that this burden of proof is met.

(15) New scientific information. The department shall consider new scientific information when establishing cleanup levels and remediation levels for individual sites. In making a determination on how to use this new information, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency. Any proposal to use new scientific information shall meet the quality of information requirements in subsection (16) of this section. To minimize delay in cleanups, any proposal to use new scientific information should be introduced as early in the cleanup process as possible. Proposals to use new scientific information may be considered up to the time of issuance of the final cleanup action plan governing the cleanup action for a site unless triggered as part of a periodic review under WAC [173-340-420](#) or through a reopener under RCW [70A.305.040](#) (4)(c).

(16) Criteria for quality of information.

- (a)** The intent of this subsection is to establish minimum criteria to be considered when evaluating information used by or submitted to the department proposing to modify the default methods or assumptions specified in this chapter or proposing methods or assumptions not specified in this chapter for calculating cleanup levels and remediation levels. This subsection does not establish a burden of proof or alter the burden of proof provided for elsewhere in this chapter.
- (b)** When deciding whether to approve or require modifications to the default methods or assumptions specified in this chapter for establishing cleanup levels and remediation levels or when deciding whether to approve or require alternative or additional methods or assumptions, the department shall consider information submitted by all interested persons and the quality of that information. When evaluating the quality of the information the department shall consider the following factors, as appropriate for the type of information submitted:
 - (i)** Whether the information is based on a theory or technique that has widespread acceptance within the relevant scientific community;
 - (ii)** Whether the information was derived using standard testing methods or other widely accepted scientific methods;
 - (iii)** Whether a review of relevant available information, both in support of and not in support of the proposed modification, has been provided along with the rationale explaining the reasons for the proposed modification;
 - (iv)** Whether the assumptions used in applying the information to the facility are valid and would ensure the proposed modification would err on behalf of protection of human health and the environment;
 - (v)** Whether the information adequately addresses populations that are more highly exposed than the population as a whole and are reasonably likely to be present at the site; and

- (vi)** Whether adequate quality assurance and quality control procedures have been used, any significant anomalies are adequately explained, the limitations of the information are identified, and the known or potential rate of error is acceptable.

WAC 173-340-703 Selection of indicator hazardous substances.

- (1) Purpose.** When defining cleanup requirements at a site that is contaminated with a large number of hazardous substances, the department may eliminate from consideration those hazardous substances that contribute a small percentage of the overall threat to human health and the environment. The remaining hazardous substances shall serve as indicator hazardous substances for purposes of defining site cleanup requirements.
- (2) Approach.** If the department considers this approach appropriate for a particular site, the factors evaluated when eliminating individual hazardous substances from further consideration shall include:

 - (a)** The toxicological characteristics of the hazardous substance that influence its ability to adversely affect human health or the environment relative to the concentration of the hazardous substance at the site, including consideration of essential nutrient requirements;
 - (b)** The chemical and physical characteristics of the hazardous substance which govern its tendency to persist in the environment;
 - (c)** The chemical and physical characteristics of the hazardous substance which govern its tendency to move into and through environmental media;
 - (d)** The natural background concentrations of the hazardous substance;
 - (e)** The thoroughness of testing for the hazardous substance at the site;
 - (f)** The frequency that the hazardous substance has been detected at the site; and
 - (g)** Degradation by-products of the hazardous substance.
- (3)** When the department determines that the use of indicator hazardous substances is appropriate for a particular site, it may also require biological testing to address potential toxic effects associated with hazardous substances eliminated from consideration under this subsection.

WAC 173-340-704 Use of Method A.

- (1) **Applicability.** Method A may be used to establish cleanup levels at sites that have few hazardous substances and that meet one of the following criteria:

 - (a) Sites undergoing a routine cleanup action as defined in WAC [173-340-200](#); or
 - (b) Sites where numerical standards are available in this chapter or applicable state and federal laws for all indicator hazardous substances in the media for which the Method A cleanup level is being used.
- (2) **Procedures.** Method A cleanup levels shall be established in accordance with the procedures in WAC [173-340-720](#) through [173-340-760](#). Method A cleanup levels shall be at least as stringent as all of the following:

 - (a) Concentrations of individual hazardous substances listed in Tables 720-1, 740-1, or 745-1 in this chapter;
 - (b) Concentrations of individual hazardous substances established under applicable state and federal laws;
 - (c) Concentrations that result in no significant adverse effects on the protection and propagation of terrestrial ecological receptors using the procedures specified in WAC [173-340-7490](#) through [173-340-7494](#), unless it is demonstrated under those sections that establishing a soil concentration is unnecessary; and
 - (d) For individual hazardous substances deemed indicator hazardous substances for the medium of concern under WAC [173-340-708](#)(2) and not addressed under (a) and (b) of this subsection, concentrations that do not exceed natural background levels or the practical quantitation limit, whichever is higher, for the substance in question.
- (3) **More stringent cleanup levels.** The department may establish Method A cleanup levels more stringent than those required by subsection (2) of this section, when based on a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC [173-340-702](#) and [173-340-708](#).
- (4) **Remediation levels.** Under Method A, the Method B formulas may be modified for the purpose of using a human health risk assessment to evaluate the protectiveness of a remedy. WAC [173-340-708](#) (3) and (10) describe the adjustments that can be made to the Method B formulas. Also see WAC [173-340-355](#) and [173-340-357](#) for more detailed information on remediation levels and quantitative risk assessment.
- (5) **Inconsistencies.** If there are any inconsistencies between this section and any specifically referenced sections, the referenced section shall govern.

WAC 173-340-705 Use of Method B.

- (1) **Applicability.** Method B is applicable to all sites. It shall be used to develop cleanup levels unless one or more of the conditions for using Method A or Method C are demonstrated to exist and the person conducting the cleanup action elects to use that method.
- (2) **Cleanup levels.** Method B consists of two approaches, standard and modified. Standard Method B uses default formulas, assumptions, and procedures to develop cleanup levels. Under modified Method B chemical-specific or site-specific information may be used to change certain assumptions to calculate different cleanup levels. When the term "Method B" is used in this chapter, it means both standard and modified Method B. Method B cleanup levels shall be established in accordance with the procedures in WAC [173-340-720](#) through [173-340-760](#). Method B cleanup levels shall be at least as stringent as all of the following:

 - (a) Concentrations of individual hazardous substances established under applicable state and federal laws;
 - (b) Concentrations that are estimated to result in no adverse effects on the protection and propagation of aquatic life, and no significant adverse effects on terrestrial ecological receptors using the procedures specified in WAC [173-340-7490](#) through [173-340-7494](#);
 - (c) For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health as determined by the following methods:

 - (i) Concentrations that are estimated to result in no acute or chronic toxic effects on human health as determined using a hazard quotient of one (1) and the procedures specified in WAC [173-340-720](#) through [173-340-760](#);
 - (ii) For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one million (1×10^{-6}) as determined using the procedures specified in WAC [173-340-720](#) through [173-340-760](#); and
 - (iii) Concentrations that eliminate or minimize the potential for food chain contamination as necessary to protect human health.
- (3) **More stringent cleanup levels.** The department may establish Method B cleanup levels that are more stringent than those required by subsection (2) of this section, when based upon a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC [173-340-702](#) and [173-340-708](#).
- (4) **Multiple hazardous substances or pathways.** Concentrations of individual hazardous substances established under subsections (2) and (3) of this section, including those based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred

thousand (1×10^{-5}). These adjustments shall be made in accordance with the procedures in WAC [173-340-708](#) (5) and (6). In making these adjustments, the hazard index shall not exceed one (1) and the total excess cancer risk shall not exceed one in one hundred thousand (1×10^{-5}).

- (5) **Adjustments to cleanup levels based on applicable laws.** Where a cleanup level is based on an applicable state or federal law, and the level of risk upon which the applicable state and federal law is based exceeds an excess cancer risk of one in one hundred thousand (1×10^{-5}) or a hazard index of one (1), the cleanup level must be adjusted downward so that the total excess cancer risk and hazard index at the site does not exceed the limits established in subsection (4) of this section.
- (6) **Limitation on adjustments.** Cleanup levels determined using Method B, including cleanup levels adjusted under subsections (4) and (5) of this section, shall not be set at levels below the practical quantitation limit or natural background, whichever is higher. See WAC [173-340-707](#) and [173-340-709](#) for additional requirements on practical quantitation limits and natural background.
- (7) **Remediation levels.** Method B formulas may be modified for the purpose of using a human health risk assessment to evaluate the protectiveness of a remedy. WAC [173-340-708](#)(3) and (10) describe the adjustments that can be made to the Method B formulas. Also see WAC [173-340-355](#) and [173-340-357](#) for more detailed information on remediation levels and quantitative risk assessment.
- (8) **Inconsistencies.** If there are any inconsistencies between this section and any specifically referenced sections, the referenced section shall govern.

WAC 173-340-706 Use of Method C.

- (1) **Applicability.** Method C cleanup levels represent concentrations that are protective of human health and the environment for specified site uses and conditions. A site (or portion of a site) that qualifies for a Method C cleanup level for one medium does not necessarily qualify for a Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium. Method C cleanup levels may be used in the following situations:
- (a) For surface water, groundwater and air, Method C cleanup levels may be established where the person conducting the cleanup action can demonstrate that such levels comply with applicable state and federal laws, that all practicable methods of treatment are used, that institutional controls are implemented in accordance with WAC [173-340-440](#), and that one or more of the following conditions exist:
 - (i) Where Method A or B cleanup levels are below area background concentrations, Method C cleanup levels may be established at concentrations that are equal to area background concentrations, but in no case greater than concentrations specified in subsection (2) of this section;
 - (ii) Where attainment of Method A or B cleanup levels has the potential for creating a significantly greater overall threat to human health or the environment than attainment of Method C cleanup levels established under this chapter, Method C cleanup levels may be established at concentrations that minimize those overall threats, but in no case greater than concentrations specified in subsection (2) of this section. Factors that shall be considered in making this determination include:
 - (A) Results of a site-specific risk assessment;
 - (B) Duration of threats;
 - (C) Reversibility of threats;
 - (D) Magnitude of threats; and
 - (E) Nature of affected population.
 - (iii) Where Method A or B cleanup levels are below technically possible concentrations, Method C cleanup levels may be established at the technically possible concentrations, but in no case greater than levels specified in subsection (2) of this section.
 - (b) Method C soil cleanup levels may only be established where the person conducting the cleanup action can demonstrate that the area under consideration is an industrial property and meets the criteria for establishing industrial soil cleanup levels under WAC [173-340-745](#).

- (c) Method C air cleanup levels may also be established for facilities qualifying as industrial property under WAC [173-340-745](#) and for utility vaults and manholes. (See WAC [173-340-750](#).)
- (2) **Cleanup levels.** Method C consists of two approaches, standard and modified. Standard Method C uses default formulas, assumptions, and procedures to develop cleanup levels. Under modified Method C, chemical-specific or site-specific information may be used to change certain assumptions to calculate different cleanup levels. When the term "Method C" is used in this chapter, it means both standard and modified Method C. Method C cleanup levels shall be established in accordance with the procedures in WAC [173-340-720](#) through [173-340-760](#). Method C cleanup levels shall be at least as stringent as all of the following:
 - (a) Concentrations established under applicable state and federal laws;
 - (b) Concentrations that are estimated to result in no significant adverse effects on the protection and propagation of aquatic life, and no significant adverse effects on wildlife using the procedures specified in WAC [173-340-7490](#) through [173-340-7494](#);
 - (c) For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which are protective of human health as determined by the following methods:
 - (i) Concentrations that are estimated to result in no significant adverse acute or chronic toxic effects on human health as estimated using a hazard quotient of one (1) and the procedures defined in WAC [173-340-720](#) through [173-340-760](#);
 - (ii) For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one hundred thousand (1×10^{-5}) as determined using the procedures defined in WAC [173-340-720](#) through [173-340-760](#); and
 - (iii) Concentrations that eliminate or minimize the potential for food chain contamination as necessary to protect human health.
- (3) **More stringent cleanup levels.** The department may establish Method C cleanup levels that are more stringent than those required by subsection (2) of this section when based upon a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC [173-340-702](#) and [173-340-708](#).
- (4) **Multiple hazardous substances or pathways.** Concentrations of individual hazardous substances established under subsections (2) and (3) of this section, including those based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1×10^{-5}). These adjustments shall be made in accordance with WAC [173-340-708](#)(5)

and (6). In making these adjustments, the hazard index shall not exceed one and the total excess cancer risk shall not exceed one in one hundred thousand (1×10^{-5}).

- (5) **Adjustments to cleanup levels based on applicable laws.** When a cleanup level is based on an applicable state or federal law and the level of risk upon which the applicable law is based exceeds an excess cancer risk of one in one hundred thousand (1×10^{-5}) or a hazard index of one (1), the cleanup level must be adjusted downward so that the total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}) and the hazard index does not exceed one (1) at the site.
- (6) **Limitation on adjustments.** Cleanup levels determined using Method C, including cleanup levels adjusted under subsections (4) and (5) of this section, shall not be set at levels below the practical quantitation limit or natural background, whichever is higher. See WAC [173-340-707](#) and [173-340-709](#) for additional requirements on practical quantitation limits and natural background.
- (7) **Remediation levels.** Method C formulas may be modified for the purpose of using a human health risk assessment to evaluate the protectiveness of a remedy. WAC [173-340-708](#)(3) and (10) describe the adjustments that can be made to the Method C formulas. Also see WAC [173-340-355](#) and [173-340-357](#) for more detailed information on remediation levels and quantitative risk assessment.
- (8) **Inconsistencies.** If there are any inconsistencies between this subsection and any specifically referenced sections, the referenced section shall govern.

WAC 173-340-707 Analytical considerations.

- (1)** Analytical methods used to evaluate the effectiveness of a cleanup action shall comply with the requirements in WAC [173-340-830](#).
- (2)** The department recognizes that there may be situations where a hazardous substance is not detected or is detected at a concentration below the practical quantitation limit utilizing sampling and analytical procedures which comply with the requirements of WAC [173-340-830](#). If those situations arise and the practical quantitation limit is higher than the cleanup level for that substance, the cleanup level shall be considered to have been attained, subject to subsection (4) of this section, only when the more stringent of the following conditions are met:
 - (a)** The practical quantitation limit is no greater than ten times the method detection limit; or
 - (b)** The practical quantitation limit for the particular hazardous substance, medium, and analytical procedure is no greater than the practical quantitation limit established by the United States Environmental Protection Agency and used to establish requirements in 40 C.F.R. 136, 40 C.F.R. 141 through 143, or 40 C.F.R. 260 through 270.
- (3)** In cases where a cleanup level required by this chapter is less than the practical quantitation limit using an approved analytical procedure, the department may also require one or more of the following:
 - (a)** Use of surrogate measures of hazardous substance contamination;
 - (b)** Use or development of specialized sample collection or analysis techniques to improve the method detection limit or practical quantitation limit for the hazardous substances at the site; or
 - (c)** Monitoring to assure that the concentration of a hazardous substance does not exceed detectable levels.
- (4)** When the practical quantitation limit is above the cleanup level, the department shall consider the availability of improved analytical techniques when performing periodic reviews under WAC [173-340-420](#). Subsequent to those reviews, the department may require the use of improved analytical techniques with lower practical quantitation limits and other appropriate actions.

WAC 173-340-708 Human health risk assessment procedures.

- (1) **Purpose.** This section defines the risk assessment framework that shall be used to establish cleanup levels, and remediation levels using a quantitative risk assessment, under this chapter. As used in this section, cleanup levels and remediation levels means the human health risk assessment component of these levels. This chapter defines certain default values and methods to be used in calculating cleanup levels and remediation levels. This section allows varying from these default values and methods under certain circumstances. When deciding whether to approve alternate values and methods the department shall ensure that the use of alternative values and methods will not significantly delay site cleanups.
- (2) **Selection of indicator hazardous substances.** When defining cleanup requirements at a site that is contaminated with a large number of hazardous substances, the department may eliminate from consideration those hazardous substances that contribute a small percentage of the overall threat to human health and the environment. The remaining hazardous substances shall serve as indicator hazardous substances for purposes of defining site cleanup requirements. See WAC [173-340-703](#) for additional information on establishing indicator hazardous substances.
- (3) **Reasonable maximum exposure.**

 - (a) Cleanup levels and remediation levels shall be based on estimates of current and future resource uses and reasonable maximum exposures expected to occur under both current and potential future site use conditions, as specified further in this chapter.
 - (b) The reasonable maximum exposure is defined as the highest exposure that is reasonably expected to occur at a site under current and potential future site use. WAC [173-340-720](#) through [173-340-760](#) define the reasonable maximum exposures for groundwater, surface water, soil, and air. These reasonable maximum exposures will apply to most sites where individuals or groups of individuals are or could be exposed to hazardous substances. For example, the reasonable maximum exposure for most groundwater is defined as exposure to hazardous substances in drinking water and other domestic uses.
 - (c) Persons performing cleanup actions under this chapter may use the evaluation criteria in WAC [173-340-720](#) through [173-340-760](#), where allowed in those sections, to demonstrate that the reasonable maximum exposure scenarios specified in those sections are not appropriate for cleanup levels for a particular site. For example, the criteria in WAC [173-340-720](#)(2) could be used to demonstrate that the reasonable maximum exposure for groundwater beneath a site does not need to be based on drinking water use. The use of an alternate exposure scenario shall be documented by the person performing the cleanup action. Documentation for the use of alternate exposure scenarios under this provision shall be based on the results of investigations performed in accordance with WAC [173-340-350](#).
 - (d) Persons performing cleanup actions under this chapter may also use alternate reasonable maximum exposure scenarios to help assess the protectiveness to human health of a cleanup action alternative that incorporates remediation levels and uses

engineered controls and/or institutional controls to limit exposure to the contamination remaining on the site.

- (i) An alternate reasonable maximum exposure scenario shall reflect the highest exposure that is reasonably expected to occur under current and potential future site conditions considering, among other appropriate factors, the potential for institutional controls to fail and the extent of the time period of failure under these scenarios and the land uses at the site.
- (ii) Land uses other than residential and industrial, such as agricultural, recreational, and commercial, shall not be used as the basis for a reasonable maximum exposure scenario for the purpose of establishing a cleanup level. However, these land uses may be used as a basis for an alternate reasonable maximum exposure scenario for the purpose of assessing the protectiveness of a remedy. For example, if a cap (with appropriate institutional controls) is the proposed cleanup action at a commercial site, the reasonable maximum exposure scenario for assessing the protectiveness of the cap with regard to direct soil contact could be changed from a child living on the site to a construction or maintenance worker and child trespasser scenario.
- (iii) The department expects that in evaluating the protectiveness of a remedy with regard to the soil direct contact pathway, many types of commercial sites may, where appropriate, qualify for alternative exposure scenarios under this provision since contaminated soil at these sites is typically characterized by a cover of buildings, pavement, and landscaped areas. Examples of these types of sites include:

 - (A) Commercial properties in a location removed from single family homes, duplexes or subdivided individual lots;
 - (B) Private and public recreational facilities where access to these facilities is physically controlled (e.g., a private golf course to which access is restricted by fencing);
 - (C) Urban residential sites (e.g., upper-story residential units over ground floor commercial businesses);
 - (D) Offices, restaurants, and other facilities primarily devoted to support administrative functions of a commercial/industrial nature (e.g., an employee credit union or cafeteria in a large office or industrial complex).
- (e) A conceptual site model may be used to identify when individuals or groups of individuals may be exposed to hazardous substances through more than one exposure pathway. For example, a person may be exposed to hazardous substances from a site by drinking contaminated groundwater, eating contaminated fish, and breathing contaminated air. At sites where the same individuals or groups of individuals are or

could be consistently exposed through more than one pathway, the reasonable maximum exposure shall represent the total exposure through all of those pathways. At such sites, the cleanup levels and remediation levels derived for individual pathways under WAC [173-340-720](#) through [173-340-760](#) and WAC [173-340-350](#) through [173-340-390](#) shall be adjusted downward to take into account multiple exposure pathways.

- (4) **Cleanup levels for individual hazardous substances.** Cleanup levels for individual hazardous substances will generally be based on a combination of requirements in applicable state and federal laws and risk assessment.
- (5) **Multiple hazardous substances.**
- (a) Cleanup levels for individual hazardous substances established under Methods B and C and remediation levels shall be adjusted downward to take into account exposure to multiple hazardous substances. This adjustment needs to be made only if, without this adjustment, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1×10^{-5}).
 - (b) Adverse effects resulting from exposure to two or more hazardous substances with similar types of toxic response are assumed to be additive unless scientific evidence is available to demonstrate otherwise. Cancer risks resulting from exposure to two or more carcinogens are assumed to be additive unless scientific evidence is available to demonstrate otherwise.
 - (c) For noncarcinogens, for purposes of establishing cleanup levels under Methods B and C, and for remediation levels, the health threats resulting from exposure to two or more hazardous substances with similar types of toxic response may be apportioned between those hazardous substances in any combination as long as the hazard index does not exceed one (1).
 - (d) For carcinogens, for purposes of establishing cleanup levels under Methods B and C, and for remediation levels, the cancer risks resulting from exposure to multiple hazardous substances may be apportioned between hazardous substances in any combination as long as the total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}).
 - (e) The department may require biological testing to assess the potential interactive effects associated with chemical mixtures.
 - (f) When making adjustments to cleanup levels and remediation levels for multiple hazardous substances, the concentration for individual hazardous substances shall not be adjusted downward to less than the practical quantitation limit or natural background.
- (6) **Multiple pathways of exposure.**

- (a) Estimated doses of individual hazardous substances resulting from more than one pathway of exposure are assumed to be additive unless scientific evidence is available to demonstrate otherwise.
 - (b) Cleanup levels and remediation levels based on one pathway of exposure shall be adjusted downward to take into account exposures from more than one exposure pathway. The number of exposure pathways considered at a given site shall be based on the reasonable maximum exposure scenario as defined in WAC 173-340-708(3). This adjustment needs to be made only if exposure through multiple pathways is likely to occur at a site and, without the adjustment, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1×10^{-5}).
 - (c) For noncarcinogens, for purposes of establishing cleanup levels under Methods B and C, and remediation levels, the health threats associated with exposure via multiple pathways may be apportioned between exposure pathways in any combination as long as the hazard index does not exceed one (1).
 - (d) For carcinogens, for purposes of establishing cleanup levels under Methods B and C, and for remediation levels, the cancer risks associated with exposure via multiple pathways may be apportioned between exposure pathways in any combination as long as the total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}).
 - (e) When making adjustments to cleanup levels and remediation levels for multiple pathways of exposure, the concentration for individual hazardous substances shall not be adjusted downward to less than the practical quantitation limit or natural background.
- (7) Reference doses.**
- (a) The chronic reference dose/reference concentration and the developmental reference dose/reference concentration shall be used to establish cleanup levels and remediation levels under this chapter. Cleanup levels and remediation levels shall be established using the value which results in the most protective concentration.
 - (b) Inhalation reference doses/reference concentrations shall be used in WAC [173-340-750](#). Where the inhalation reference dose/reference concentration is reported as a concentration in air, that value shall be converted to a corresponding inhaled intake (mg/kg-day) using a human body weight of 70 kg and an inhalation rate of 20 m³/day, and take into account, where available, the respiratory deposition and absorption characteristics of the gases and inhaled particles.
 - (c) A subchronic reference dose/reference concentration may be used to evaluate potential noncarcinogenic effects resulting from exposure to hazardous substances over short periods of time. This value may be used in place of the chronic reference dose/reference concentration where it can be demonstrated that a particular hazardous substance will degrade to negligible concentrations during the exposure period.

- (d) For purposes of establishing cleanup levels and remediation levels for hazardous substances under this chapter, a reference dose/reference concentration established by the United States Environmental Protection Agency and available through the "integrated risk information system" (IRIS) database shall be used. If a reference dose/reference concentration is not available through the IRIS database, a reference dose/reference concentration from the U.S. EPA Health Effects Assessment Summary Table ("HEAST") database or, if more appropriate, the National Center for Environmental Assessment ("NCEA") shall be used.
 - (e) If a reference dose/reference concentration is available through IRIS, HEAST, or the NCEA, it shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this value is inappropriate.
 - (f) If a reference dose/reference concentration for a hazardous substance including petroleum fractions and petroleum constituents is not available through IRIS, HEAST or the NCEA or is demonstrated to be inappropriate under (e) of this subsection and the department determines that development of a reference dose/reference concentration is necessary for the hazardous substance at the site, then a reference dose/reference concentration shall be established on a case-by-case basis. When establishing a reference dose on a case-by-case basis, the methods described in "Reference Dose (RfD): Description and Use in Health Risk Assessment: Background Document 1A", USEPA, March 15, 1993, shall be used.
 - (g) In estimating a reference dose/reference concentration for a hazardous substance under (e) or (f) of this subsection, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency and may, as appropriate, consult with other qualified persons. Scientific data supporting such a change shall be subject to the requirements under WAC [173-340-702](#)(14), (15) and (16). Once the department has established a reference dose/reference concentration for a hazardous substance under this provision, the department is not required to consult again for the same hazardous substance.
 - (h) Where a reference dose/reference concentration other than those established under (d) or (g) of this subsection is used to establish a cleanup level or remediation level at individual sites, the department shall summarize the scientific rationale for the use of those values in the cleanup action plan. The department shall provide the opportunity for public review and comment on this value in accordance with the requirements of WAC [173-340-380](#) and [173-340-600](#).
- (8) Carcinogenic potency factor.**
- (a) For purposes of establishing cleanup levels and remediation levels for hazardous substances under this chapter, a carcinogenic potency factor established by the United States Environmental Protection Agency and available through the IRIS database shall be used. If a carcinogenic potency factor is not available from the IRIS database, a carcinogenic potency factor from HEAST or, if more appropriate, from the NCEA shall be used.

- (b) If a carcinogenic potency factor is available from the IRIS, HEAST or the NCEA, it shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this value is inappropriate.
- (c) If a carcinogenic potency factor is not available through IRIS, HEAST or the NCEA or is demonstrated to be inappropriate under (b) of this subsection and the department determines that development of a cancer potency factor is necessary for the hazardous substance at the site, then one of the following methods shall be used to establish a carcinogenic potency factor:
 - (i) The carcinogenic potency factor may be derived from appropriate human epidemiology data on a case-by-case basis; or
 - (ii) The carcinogenic potency factor may be derived from animal bioassay data using the following procedures:
 - (A) All carcinogenicity bioassays shall be reviewed and data of appropriate quality shall be used for establishing the carcinogenic potency factor.
 - (B) The linearized multistage extrapolation model shall be used to estimate the slope of the dose-response curve unless the department determines that there is clear and convincing scientific data which demonstrates that the use of an alternate extrapolation model is more appropriate;
 - (C) All doses shall be adjusted to give an average daily dose over the study duration; and
 - (D) An interspecies scaling factor shall be used to take into account differences between animals and humans. For oral carcinogenic toxicity values this scaling factor shall be based on the assumption that milligrams per surface area is an equivalent dose between species unless the department determines there is clear and convincing scientific data which demonstrates that an alternate procedure is more appropriate. The slope of the dose response curve for the test species shall be multiplied by this scaling factor in order to obtain the carcinogenic potency factor, except where such scaling factors are incorporated into the extrapolation model under (B) of this subsection. The procedure to derive a human equivalent concentration of inhaled particles and gases shall take into account, where available, the respiratory deposition and absorption characteristics of the gases and inhaled particles. Where adequate pharmacokinetic and metabolism studies are available, data from these studies may be used to adjust the interspecies scaling factor.
- (d) **Mixtures of dioxins and furans.** When establishing and determining compliance with cleanup levels and remediation levels for mixtures of chlorinated dibenzo-p-dioxins (dioxins) and/or chlorinated dibenzofurans (furans), the following procedures shall be used:

- (i) **Assessing as single hazardous substance.** When establishing and determining compliance with cleanup levels and remediation levels, including when determining compliance with the excess cancer risk requirements in this chapter, mixtures of dioxins and/or furans shall be considered a single hazardous substance.
- (ii) **Establishing cleanup levels and remediation levels.** The cleanup levels and remediation levels established for 2,3,7,8 tetrachloro dibenzo-p-dioxin (2,3,7,8-TCDD) shall be used, respectively, as the cleanup levels and remediation levels for mixtures of dioxins and/or furans.
- (iii) **Determining compliance with cleanup levels and remediation levels.** When determining compliance with the cleanup levels and remediation levels established for mixtures of dioxins and/or furans, the following procedures shall be used:
 - (A) Calculate the total toxic equivalent concentration of 2,3,7,8-TCDD for each sample of the mixture. The total toxic equivalent concentration shall be calculated using the following method, unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this method is inappropriate:
 - (I) Analyze samples from the medium of concern to determine the concentration of each dioxin and furan congener listed in Table 708-1;
 - (II) For each sample analyzed, multiply the measured concentration of each congener in the sample by its corresponding toxicity equivalency factor (TEF) in Table 708-1 to obtain the toxic equivalent concentration of 2,3,7,8-TCDD for that congener; and
 - (III) For each sample analyzed, add together the toxic equivalent concentrations of all the congeners within the sample to obtain the total toxic equivalent concentration of 2,3,7,8-TCDD for that sample.
 - (B) After calculating the total toxic equivalent concentration of each sample of the mixture, use the applicable compliance monitoring requirements in WAC [173-340-720](#) through [173-340-760](#) to determine whether the total toxic equivalent concentrations of the samples comply with the cleanup level or remediation level for the mixture at the applicable point of compliance.
- (iv) **Protecting the quality of other media.** When establishing cleanup levels and remediation levels for mixtures of dioxins and/or furans in a medium of concern that are based on protection of another medium (the receiving medium)

(e.g., soil levels protective of groundwater quality), the following procedures shall be used:

- (A) The cleanup level or remediation level for 2,3,7,8-TCDD in the receiving medium shall be used, respectively, as the cleanup level or remediation level for the receiving medium.
 - (B) When determining the concentrations in the medium of concern that will achieve the cleanup level or remediation level in the receiving medium, the congener-specific physical and chemical properties shall be considered during that assessment.
- (e) **Mixtures of carcinogenic PAHs.** When establishing and determining compliance with cleanup levels and remediation levels for mixtures of carcinogenic polycyclic aromatic hydrocarbons (carcinogenic PAHs), the following procedures shall be used:
 - (i) **Assessing as single hazardous substance.** When establishing and determining compliance with cleanup levels and remediation levels, including when determining compliance with the excess cancer risk requirements in this chapter, mixtures of carcinogenic PAHs shall be considered a single hazardous substance.
 - (ii) **Establishing cleanup levels and remediation levels.** The cleanup levels and remediation levels established for benzo(a)pyrene shall be used, respectively, as the cleanup levels and remediation levels for mixtures of carcinogenic PAHs.
 - (iii) **Determining compliance with cleanup levels and remediation levels.** When determining compliance with cleanup levels and remediation levels established for mixtures of carcinogenic PAHs, the following procedures shall be used:
 - (A) Calculate the total toxic equivalent concentration of benzo (a) pyrene for each sample of the mixture. The total toxic equivalent concentration shall be calculated using the following method, unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this method is inappropriate:
 - (I) Analyze samples from the medium of concern to determine the concentration of each carcinogenic PAH listed in Table 708-2 and, for those carcinogenic PAHs required by the department under WAC 173-340-708(8)(e)(iv), in Table 708-3;
 - (II) For each sample analyzed, multiply the measured concentration of each carcinogenic PAH in the sample by its corresponding toxicity equivalency factor (TEF) in Tables 708-2 and 708-3 to obtain the toxic equivalent concentration of benzo(a)pyrene for that carcinogenic PAH; and
 - (III) For each sample analyzed, add together the toxic equivalent concentrations of all the carcinogenic PAHs within the sample to

obtain the total toxic equivalent concentration of benzo(a)pyrene for that sample.

- (B) After calculating the total toxic equivalent concentration of each sample of the mixture, use the applicable compliance monitoring requirements in WAC [173-340-720](#) through [173-340-760](#) to determine whether the total toxic equivalent concentrations of the samples comply with the cleanup level or remediation level for the mixture at the applicable point of compliance.
- (iv) **Protecting the quality of other media.** When establishing cleanup levels and remediation levels for mixtures of carcinogenic PAHs in a medium of concern that are based on protection of another medium (the receiving medium) (e.g., soil levels protective of groundwater quality), the following procedures shall be used:
 - (A) The cleanup level or remediation level for benzo(a)pyrene in the receiving medium shall be used, respectively, as the cleanup level or remediation level for the receiving medium.
 - (B) When determining the concentrations in the medium of concern that will achieve the cleanup level or remediation level in the receiving medium, the carcinogenic PAH-specific physical and chemical properties shall be considered during that assessment.
- (v) When using this methodology, at a minimum, the compounds in Table 708-2 shall be analyzed for and included in the calculations. The department may require additional compounds in Table 708-3 to be included in the methodology should site testing data or information from other comparable sites or waste types indicate the additional compounds are potentially present at the site. *NOTE: Many of the polycyclic aromatic hydrocarbons in Table 708-3 are found primarily in air emissions from combustion sources and may not be present in the soil or water at contaminated sites. Users should consult with the department for information on the need to test for these additional compounds.*
- (f) **PCB mixtures.** When establishing and determining compliance with cleanup levels and remediation levels for polychlorinated biphenyls (PCBs) mixtures, the following procedures shall be used:
 - (i) **Assessing as single hazardous substance.** When establishing and determining compliance with cleanup levels and remediation levels, including when determining compliance with the excess cancer risk requirements in this chapter, PCB mixtures shall be considered a single hazardous substance.
 - (ii) **Establishing cleanup levels and remediation levels.** When establishing cleanup levels and remediation levels under Methods B and C for PCB mixtures, the following procedures shall be used unless the department determines that

(9) Bioconcentration factors.

- (a)** For purposes of establishing cleanup levels and remediation levels for a hazardous substance under WAC [173-340-730](#), a bioconcentration factor established by the United States Environmental Protection Agency and used to establish the ambient water quality criterion for that substance under section 304 of the Clean Water Act shall be used. These values shall be used unless the department determines that there is adequate scientific data which demonstrates that the use of an alternate value is more appropriate. If the department determines that a bioconcentration factor is appropriate for a specific hazardous substance and no such factor has been established by USEPA, then other appropriate EPA documents, literature sources or empirical information may be used to determine a bioconcentration factor.
- (b)** When using a bioconcentration factor other than that used to establish the ambient water quality criterion, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency. Scientific data supporting such a value shall be subject to the requirements under WAC [173-340-702](#)(14), (15) and (16). Once the department has established a bioconcentration factor for a hazardous substance under this provision, the department is not required to consult again for the same hazardous substance.
- (c)** Where a bioconcentration factor other than that established under (a) of this subsection is used to establish cleanup levels or remediation levels at individual sites, the department shall summarize the scientific rationale for the use of that factor in the draft cleanup action plan. The department shall provide the opportunity for public review and comment on the value in accordance with the requirements of WAC [173-340-380](#) and [173-340-600](#).

(10) Exposure parameters.

- (a)** As a matter of policy, the department has defined in WAC [173-340-720](#) through [173-340-760](#) the default values for exposure parameters to be used when establishing cleanup levels and remediation levels under this chapter. Except as provided for in (b) and (c) of this subsection and in WAC [173-340-720](#) through [173-340-760](#), these default values shall not be changed for individual hazardous substances or sites.
- (b)** Exposure parameters that are primarily a function of the exposed population characteristics (such as body weight and lifetime) and those that are primarily a function of human behavior that cannot be controlled through an engineered or institutional control (such as: Fish consumption rate; soil ingestion rate; drinking water ingestion rate; and breathing rate) are not expected to vary on a site-by-site basis. The default values for these exposure parameters shall not be changed when calculating cleanup levels except when necessary to establish a more stringent cleanup level to protect human health. For remediation levels the default values for these exposure parameters may only be changed when an alternate reasonable maximum exposure scenario is used, as provided for in WAC 173-340-708(3)(d), that reflects a different exposed

population such as using an adult instead of a child exposure scenario. Other exposure parameters may be changed only as follows:

- (i) For calculation of cleanup levels, the types of exposure parameters that may be changed are those that are:
 - (A) Primarily a function of reliably measurable characteristics of the hazardous substance, soil, hydrologic or hydrogeologic conditions at the site; and
 - (B) Not dependent on the success of engineered controls or institutional controls for controlling exposure of persons to the hazardous substances at the site.

The default values for these exposure parameters may be changed where there is adequate scientific data to demonstrate that use of an alternative or additional value would be more appropriate for the conditions present at the site. Examples of exposure parameters for which the default values may be changed under this provision are as follows: Contaminant leaching and transport variables (such as the soil organic carbon content, aquifer permeability and soil sorption coefficient); inhalation correction factor; fish bioconcentration factor; soil gastrointestinal absorption fraction; and inhalation absorption percentage.

- (ii) For calculation of remediation levels, in addition to the exposure parameters that may be changed under (b)(i) of this subsection, the types of exposure parameters that may be changed from the default values are those where a demonstration can be made that the proposed cleanup action uses engineered controls and/or institutional controls that can be successfully relied on, for the reasonably foreseeable future, to control contaminant mobility and/or exposure to the contamination remaining on the site. In general, exposure parameters that may be changed under this provision are those that define the exposure frequency, exposure duration and exposure time. The default values for these exposure parameters may be changed where there is adequate scientific data to demonstrate that use of an alternative or additional value would be more appropriate for the conditions present at the site. Examples of exposure parameters for which the default value may be changed under this provision are as follows: Infiltration rate; frequency of soil contact; duration of soil exposure; duration of drinking water exposure; duration of air exposure; drinking water fraction; and fish diet fraction.

- (c) When the modifications provided for in (b) of this subsection result in significantly higher values for cleanup levels or remediation levels than would be calculated using the default values for exposure parameters, the risk from other potentially relevant pathways of exposure shall be addressed under the procedures provided for in WAC [173-340-720](#) through [173-340-760](#). For exposure pathways and parameters for

which default values are not specified in this chapter, the framework provided for by this subsection, along with the quality of information requirements in WAC [173-340-702](#), shall be used to establish appropriate or additional assumptions for these parameters and pathways.

- (d) Where the department approves the use of exposure parameters other than those established under WAC [173-340-720](#) through [173-340-760](#) to establish cleanup levels or remediation levels at individual sites, the department shall summarize the scientific rationale for the use of those parameters in the cleanup action plan. The department shall provide the opportunity for public review and comment on those values in accordance with the requirements of WAC [173-340-380](#) and [173-340-600](#). Scientific data supporting such a change shall be subject to the requirements under WAC [173-340-702](#)(14), (15) and (16).
- (11) **Probabilistic risk assessment.** Probabilistic risk assessment methods may be used under this chapter only on an informational basis for evaluating alternative remedies. Such methods shall not be used to replace cleanup standards and remediation levels derived using deterministic methods under this chapter until the department has adopted rules describing adequate technical protocols and policies for the use of probabilistic risk assessment under this chapter.

WAC 173-340-709 Methods for defining background concentrations.

- (1) **Purpose.** Sampling of hazardous substances in background areas may be conducted to distinguish site-related concentration from nonsite related concentrations of hazardous substances or to support the development of a Method C cleanup level under the provisions of WAC [173-340-706](#). For purposes of this chapter, two types of background may be determined, natural background and area background concentrations, as defined in WAC [173-340-200](#).
- (2) **Background concentrations.** For purposes of defining background concentrations, samples shall be collected from areas that have the same basic characteristics as the medium of concern at the site, have not been influenced by releases from the site and, in the case of natural background concentrations, have not been influenced by releases from other localized human activities.
- (3) **Statistical analysis.**

 - (a) The statistical methods used to evaluate data sets shall be appropriate for the distribution of each hazardous substance. More than one statistical method may be required at a site.
 - (b) Background sampling data shall be assumed to be lognormally distributed unless it can be demonstrated that another distribution is more appropriate.
 - (c) For lognormally distributed data sets, background shall be defined as the true upper 90th percentile or four times the true 50th percentile, whichever is lower.
 - (d) For normally distributed data sets, background shall be defined as the true upper 80th percentile or four times the true 50th percentile, whichever is lower.
 - (e) Other statistical methods may be used if approved by the department.
- (4) **Sample size.** When determining natural background concentrations for soil, a sample size of ten or more background soil samples shall be required. When determining area background concentrations for soil, a sample size of twenty or more soil samples shall be required. The number of samples for other media shall be sufficient to provide a representative measure of background concentrations and shall be determined on a case-by-case basis.
- (5) **Procedures.** For the purposes of estimating background concentrations, the following procedures shall be used for measurements below the practical quantitation limit:

 - (a) Measurements below the method detection limit shall be assigned a value equal to one-half of the method detection limit.
 - (b) Measurements above the method detection limit, but below the practical quantitation limit shall be assigned a value equal to the method detection limit.
 - (c) The department may approve the use of alternate statistical procedures for handling data below the method detection limit or practical quantitation limit.

WAC 173-340-710 Applicable local, state and federal laws.

- (1) **Applicable state and federal laws.** All cleanup actions conducted under this chapter shall comply with applicable state and federal laws. For purposes of this chapter, the term "applicable state and federal laws" shall include legally applicable requirements and those requirements that the department determines, based on consideration of the criteria in subsection (4) of this section, are relevant and appropriate requirements.
- (2) **Department determination.** The person conducting a cleanup action shall identify all applicable state and federal laws. The department shall make the final interpretation on whether these requirements have been correctly identified and are legally applicable or relevant and appropriate.
- (3) **Legally applicable requirements.** Legally applicable requirements include those cleanup standards, standards of control, and other environmental protection requirements, criteria, or limitations adopted under state or federal law that specifically address a hazardous substance, cleanup action, location or other circumstances at the site.
- (4) **Relevant and appropriate requirements.** Relevant and appropriate requirements include those cleanup standards, standards of control, and other environmental requirements, criteria, or limitations established under state or federal law that, while not legally applicable to the hazardous substance, cleanup action, location, or other circumstance at a site, address problems or situations sufficiently similar to those encountered at the site that their use is well suited to the particular site. WAC 173-340-710 through [173-340-760](#) identifies several requirements the department shall consider relevant and appropriate for establishing cleanup standards. For other regulatory requirements, the following criteria shall be evaluated, where pertinent, to determine whether such requirements are relevant and appropriate for a particular hazardous substance, remedial action, or site:

 - (a) Whether the purpose for which the statute or regulations under which the requirement was created is similar to the purpose of the cleanup action;
 - (b) Whether the media regulated or affected by the requirement is similar to the media contaminated or affected at the site;
 - (c) Whether the hazardous substance regulated by the requirement is similar to the hazardous substance found at the site;
 - (d) Whether the entities or interests affected or protected by the requirement are similar to the entities or interests affected by the site;
 - (e) Whether the actions or activities regulated by the requirement are similar to the cleanup action contemplated at the site;
 - (f) Whether any variance, waiver, or exemption to the requirements are available for the circumstances of the site;
 - (g) Whether the type of place regulated is similar to the site;

- (h) Whether the type and size of structure or site regulated is similar to the type and size of structure or site affected by the release or contemplated by the cleanup action; and
 - (i) Whether any consideration of use or potential use of affected resources in the requirement is similar to the use or potential use of the resources affected by the site or contemplated cleanup action.
- (5) **Variances.** For purposes of this chapter, a regulatory variance or waiver provision included in an applicable state and federal law shall be considered potentially applicable to interim actions and cleanup actions and the department may determine that a particular regulatory variance or waiver is appropriate if the substantive conditions for such a regulatory variance or waiver are met. In all such cases, interim actions and cleanup actions shall be protective of human health and the environment.
- (6) **New requirements.** The department shall consider new applicable state and federal laws as part of the periodic review under WAC [173-340-420](#). Cleanup actions shall be evaluated in light of these new requirements to determine whether the cleanup action is still protective of human health and the environment.
- (7) **Selection of cleanup actions.** To demonstrate compliance with WAC [173-340-350](#) through [173-340-390](#), cleanup actions shall comply with all applicable state and federal laws in addition to the other requirements of this chapter. The following, which is not a complete list, are selected applications of specific applicable state and federal laws to cleanup actions.
 - (a) **Water discharge requirements.** Hazardous substances that are directly or indirectly released or proposed to be released to waters of the state shall be provided with all known, available and reasonable methods of treatment consistent with the requirements of chapters [90.48](#) and [90.54](#) RCW and the regulations that implement those statutes.
 - (b) **Air emission requirements.** Best available control technologies consistent with the requirements of chapter [70.94](#) RCW and the regulations that implement this statute shall be applied to releases of hazardous substances to the air resulting from cleanup actions at a site.
 - (c) **Solid waste landfill closure requirements.** For solid waste landfills, the solid waste closure requirements in chapter [173-304](#) WAC shall be minimum requirements for cleanup actions conducted under this chapter. In addition, when the department determines that the closure requirements in chapters [173-351](#) or [173-303](#) WAC are legally applicable or relevant and appropriate requirements, the more stringent closure requirements under those laws shall also apply to cleanup actions conducted under this chapter.
 - (d) **Sediment management requirements.** Sediment cleanup actions conducted under this chapter shall comply with the sediment cleanup standards in chapter [173-204](#) WAC. In addition, a remedial investigation/feasibility study conducted under WAC [173-340-350](#)

and [173-340-351](#) shall also comply with the cleanup study plan requirements under chapter [173-204](#) WAC. The process for selecting sediment cleanup actions under this chapter shall comply with the requirements in WAC [173-340-350](#) through [173-340-390](#).

- (8) **Interim actions.** Interim actions conducted under this chapter shall comply with legally applicable requirements. The department may also determine, based on the criteria in subsection (3) of this section, that other requirements, criteria, or limitations are relevant and appropriate for interim actions.
- (9) **Permits and exemptions.**
- (a) Independent remedial actions must obtain permits required by other federal, state and local laws.
 - (b) Under RCW [70A.305.090](#), remedial actions conducted under a consent decree, order, or agreed order, and the department when it conducts a remedial action are exempt from the procedural requirements of certain laws. This exemption shall not apply if the department determines that the exemption would result in loss of approval from a federal agency necessary for the state to administer any federal law. This exemption applies to the following laws:
 - (i) Chapter [70A.15](#) RCW;
 - (ii) Chapter [70A.205](#) RCW;
 - (iii) Chapter [70A.300](#) RCW;
 - (iv) Chapter [77.55](#) RCW;
 - (v) Chapter [90.48](#) RCW;
 - (vi) Chapter [90.58](#) RCW; and
 - (vii) Any laws requiring or authorizing local government permits or approvals for the remedial action.
 - (c) Remedial actions exempt from procedural requirements under (a) and (b) of this subsection still must comply with the substantive requirements of these laws.
 - (d) The department shall ensure compliance with substantive requirements and provide an opportunity for comment by the public and by the state agencies and local governments that would otherwise implement these laws as follows:
 - (i) Before proposing any substantive requirements, the department or potentially liable persons, if directed to do so by the department, shall consult with the state agencies and local governments to identify potential permits and to obtain written documentation from the consulted agencies regarding the substantive requirements for permits exempted under RCW [70A.305.090](#).
 - (ii) The permit exemptions and the substantive requirements, to the extent they are known, shall be identified by the department in the order, decree, or if the

cleanup is being conducted by the department, in the work plan prepared by the department.

- (iii) A public notice of the order, decree or work plan shall be issued in accordance with WAC [173-340-600](#). The notice shall specifically identify the permits exempted under RCW [70A.305.090](#) and seek comment on the substantive requirements proposed to be applied to the remedial action. This notice shall be provided to the state agencies and local governments that would otherwise implement these permits. This notice shall also be provided to the same individuals that the state agencies and local government have identified that would normally be provided notice to if a permit was being issued.
- (iv) Substantive requirements, to the extent known and identified by the state agencies and local governments before issuing the order, decree or work plan and those identified by the state agencies and local government during the public comment period shall be incorporated into the order, decree or work plan if approved by the department.
- (e) It shall be the continuing obligation of persons conducting remedial actions to determine whether additional permits or approvals or substantive requirements are required. In the event that either the person conducting the remedial action or the department becomes aware of additional permits or approvals or substantive requirements that apply to the remedial action, they shall promptly notify the other party of this knowledge. The department, or the potentially liable person at the department's request, shall consult with the state or local agency on these additional requirements. The department shall make the final determination on the application of any additional substantive requirements at the site.

WAC 173-340-720 Groundwater cleanup standards.**(1) General considerations.**

- (a)** Groundwater cleanup levels shall be based on estimates of the highest beneficial use and the reasonable maximum exposure expected to occur under both current and potential future site use conditions. The department has determined that at most sites use of groundwater as a source of drinking water is the beneficial use requiring the highest quality of groundwater and that exposure to hazardous substances through ingestion of drinking water and other domestic uses represents the reasonable maximum exposure. Unless a site qualifies under subsection (2) of this section for a different groundwater beneficial use, groundwater cleanup levels shall be established using this presumed exposure scenario and be established in accordance with subsection (3), (4) or (5) of this section. If the site qualifies for a different groundwater beneficial use, groundwater cleanup levels shall be established under subsection (6) of this section.
- (b)** In the event of a release of a hazardous substance at a site, a cleanup action complying with this chapter shall be conducted to address all areas where the concentration of the hazardous substance in groundwater exceeds cleanup levels.
- (c)** Groundwater cleanup levels shall be established at concentrations that do not directly or indirectly cause violations of surface water, sediments, soil, or air cleanup standards established under this chapter or other applicable state and federal laws. A site that qualifies for a Method C groundwater cleanup level under this section does not necessarily qualify for a Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium.
- (d)** The department may require more stringent cleanup levels than specified in this section where necessary to protect other beneficial uses or otherwise protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC [173-340-702](#) and [173-340-708](#). The following are examples of situations that may require more stringent cleanup levels:
 - (i)** Concentrations that are necessary to protect sensitive subgroups;
 - (ii)** Concentrations that eliminate or minimize the potential for food chain contamination;
 - (iii)** Concentrations that eliminate or minimize the potential for damage to soils or biota in the soils which could impair the use of the soil for agricultural or silvicultural purposes;
 - (iv)** Concentrations that eliminate or minimize the potential for the accumulation of vapors in buildings or other structures to concentrations which pose a threat to human health or the environment; and
 - (v)** Concentrations that protect nearby surface waters.

- (2) **Potable groundwater defined.** Groundwater shall be classified as potable to protect drinking water beneficial uses unless the following can be demonstrated:
- (a) The groundwater does not serve as a current source of drinking water;
 - (b) The groundwater is not a potential future source of drinking water for any of the following reasons:
 - (i) The groundwater is present in insufficient quantity to yield greater than 0.5 gallon per minute on a sustainable basis to a well constructed in compliance with chapter [173-160](#) WAC and in accordance with normal domestic water well construction practices for the area in which the site is located;
 - (ii) The groundwater contains natural background concentrations of organic or inorganic constituents that make use of the water as a drinking water source not practicable. Groundwater containing total dissolved solids at concentrations greater than 10,000 mg/l shall normally be considered to have fulfilled this requirement; *(NOTE: The total dissolved solids concentration provided here is an example. There may be other situations where high natural background levels also meet this requirement.)* or
 - (iii) The groundwater is situated at a great depth or location that makes recovery of water for drinking water purposes technically impossible; and
 - (c) The department determines it is unlikely that hazardous substances will be transported from the contaminated groundwater to groundwater that is a current or potential future source of drinking water, as defined in (a) and (b) of this subsection, at concentrations which exceed groundwater quality criteria published in chapter [173-200](#) WAC.

In making a determination under this provision, the department shall consider site-specific factors including:

 - (i) The extent of affected groundwater;
 - (ii) The distance to existing water supply wells;
 - (iii) The likelihood of interconnection between the contaminated groundwater and groundwater that is a current or potential future source of drinking water due to well construction practices in the area of the state where the site is located;
 - (iv) The physical and chemical characteristics of the hazardous substance;
 - (v) The hydrogeologic characteristics of the site;
 - (vi) The presence of discontinuities in the affected geologic stratum; and
 - (vii) The degree of confidence in any predictive modeling performed.
 - (d) Even if groundwater is classified as a potential future source of drinking water under (b) of this subsection, the department recognizes that there may be sites where there is an

extremely low probability that the groundwater will be used for that purpose because of the site's proximity to surface water that is not suitable as a domestic water supply. An example of this situation would be shallow groundwaters in close proximity to marine waters such as on Harbor Island in Seattle. At such sites, the department may allow groundwater to be classified as nonpotable for the purposes of this section if each of the following conditions can be demonstrated. These determinations must be for reasons other than that the groundwater or surface water has been contaminated by a release of a hazardous substance at the site.

- (i) The conditions specified in (a) and (c) of this subsection are met;
- (ii) There are known or projected points of entry of the groundwater into the surface water;
- (iii) The surface water is not classified as a suitable domestic water supply source under chapter [173-201A](#) WAC; and
- (iv) The groundwater is sufficiently hydraulically connected to the surface water that the groundwater is not practicable to use as a drinking water source.

(3) Method A cleanup levels for potable groundwater.

- (a) **Applicability.** Method A groundwater cleanup levels may only be used at sites qualifying under WAC [173-340-704](#)(1).
- (b) **General requirements.** Method A cleanup levels shall be at least as stringent as all of the following:
 - (i) Concentrations listed in Table 720-1 and compliance with the corresponding footnotes;
 - (ii) Concentrations established under applicable state and federal laws, including the following requirements:
 - (A) Maximum contaminant levels established under the Safe Drinking Water Act and published in 40 C.F.R. 141;
 - (B) Maximum contaminant level goals for noncarcinogens established under the Safe Drinking Water Act and published in 40 C.F.R. 141;
 - (C) Maximum contaminant levels established by the state board of health and published in chapter [246-290](#) WAC.
 - (iii) For hazardous substances deemed indicator hazardous substances for groundwater under WAC [173-340-708](#)(2) and for which there is no value in Table 720-1 or applicable state and federal laws, concentrations that do not exceed natural background or the practical quantitation limit, subject to the limitations in this chapter.
 - (iv) **Protection of surface water beneficial uses.** Concentrations established in accordance with the methods specified in WAC [173-340-730](#) for protecting

surface water beneficial uses, unless it can be demonstrated that the hazardous substances are not likely to reach surface water. This demonstration must be based on factors other than implementation of a cleanup action at the site.

(4) Method B cleanup levels for potable groundwater.

- (a) Applicability.** Method B potable groundwater cleanup levels consist of standard and modified cleanup levels determined using the procedures in this subsection. Either standard or modified Method B groundwater cleanup levels based on drinking water beneficial uses may be used at any site.
- (b) Standard Method B potable groundwater cleanup levels.** Where the groundwater cleanup level is based on a drinking water beneficial use, standard Method B cleanup levels shall be at least as stringent as all of the following:

 - (i) Applicable state and federal laws.** Concentrations established under applicable state and federal laws, including the requirements in subsection (3)(b)(ii) of this section;
 - (ii) Protection of surface water beneficial uses.** Concentrations established in accordance with the methods specified in WAC [173-340-730](#) for protecting surface water beneficial uses, unless it can be demonstrated that the hazardous substances are not likely to reach surface water. This demonstration must be based on factors other than implementation of a cleanup action at the site.
 - (iii) Human health protection.** For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health as determined by the following methods:

 - (A) Noncarcinogens.** Concentrations that are estimated to result in no acute or chronic toxic effects on human health as determined using Equation 720-1.

Equation 720-1

Groundwater cleanup level (ug/l)	=	Rfd x ABW x UCF x HQ x AT
		DWIR x INH x DWF x ED
Where:		
RfD	=	Reference does as specified in WAC 173-340-708 (7) (mg/kg-day)
ABW	=	Average body weight during the exposure duration (16 kg)
UCF	=	Unit conversion factor (1,000 ug/mg)
HQ	=	Hazard quotient (1) (unitless)
AT	=	Averaging time (6 years)
DWIR	=	Drinking water ingestion rate (1.0 liter/day)
INH	=	Inhalation correction factor (use value of 2 for volatile organic compounds and 1 for all other substances [unitless])
DWF	=	Drinking water fraction (1.0) (unitless)
ED	=	Exposure duration (6 years)

- (B) **Carcinogens.** For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in 1,000,000 (1×10^{-6}) as determined using Equation 720-2.

Equation 720-2

Groundwater cleanup level (ug/l)	=	RISK x ABW x AT x UCF	
		CPF x DWIR x ED x INH x DWF	
Where:			
RISK	=	Acceptable cancer risk level (1 in 1,000,000) (unitless)	
ABW	=	Average body weight during the exposure duration (70 kg)	
AT	=	Averaging time (75 years)	
UCF	=	Unit conversion factor (1,000 ug/mg)	
CPF	=	Carcinogenic potency factor as specified in WAC <u>173-340-708</u> (8) (kg-day/mg)	
DWIR	=	Drinking water ingestion rate (2.0 liters/day)	
ED	=	Exposure duration (30 years)	
INH	=	Inhalation correction factor (use value of 2 for volatile organic compounds and 1 for all other substances [unitless])	
DWF	=	Drinking water fraction (1.0) (unitless)	

- (C) **Petroleum mixtures.** For noncarcinogenic effects of petroleum mixtures, a total petroleum hydrocarbon cleanup level shall be calculated taking into account the additive effects of the petroleum fractions and volatile organic compounds present in the petroleum mixture. Equation 720-3 shall be used for this calculation. Cleanup levels

for other noncarcinogens and known or suspected carcinogens within the petroleum mixture shall be calculated using Equations 720-1 and 720-2. See Table 830-1 for the analyses required for various petroleum products to use this method. A total petroleum hydrocarbon cleanup level for petroleum mixtures derived using Equation 720-3 shall be adjusted when necessary so that biological degradation of the petroleum does not result in exceedances of the maximum contaminant levels in chapter [246-290](#) WAC or natural background, whichever is higher.

Equation 720-3

$$C_w = \frac{HI \times AT}{\left[\frac{DWIR \times DWF \times ED}{ABW \times UCF} \right] \times \sum_{i=1}^n \frac{F(i) \times INH(i)}{RfD(i)}}$$

AT and ED added to above equation		
Where:		
C_w	=	TPH groundwater cleanup level (ug/l)
HI	=	Hazard index (1) (unitless)
AT	=	Averaging time (6 years)
DWIR	=	Drinking water intake rate (1.0 liter/day)
DWF	=	Drinking water fraction (1.0) (unitless)
ED	=	Exposure duration (6 years)
ABW	=	Average body weight during the exposure duration (16 kg)
UCF	=	Unit conversion factor (1,000 ug/mg)
$F(i)$	=	Fraction by weight of petroleum component (i). (Unitless) (Use site specific groundwater composition data, provided the data is representative of present and future conditions at the site, or use the groundwater composition predicted under WAC 173-340-747)
$INH(i)$	=	Inhalation correction factor for petroleum component (i) (use value of 2 for volatile organic compounds and 1 for all other components [unitless])
$RfD(i)$	=	Reference dose of petroleum component (i) as specified in WAC 173-340-708 (7) (mg/kg day)
n	=	The number of petroleum components (petroleum fractions plus volatile organic compounds with an RfD) present in the petroleum mixture. (See Table 830-1.)

- (c) **Modified Method B potable groundwater cleanup levels.** Modified Method B groundwater cleanup levels for drinking water beneficial uses are standard Method B groundwater cleanup levels modified with chemical-specific or site-specific data. When making these adjustments, the resultant cleanup levels shall meet applicable state and

federal laws and health risk levels for standard Method B groundwater cleanup levels. Changes to exposure assumptions must comply with WAC [173-340-708](#)(10).

The following adjustments may be made to the default assumptions in the standard Method B equations to derive modified Method B groundwater cleanup levels for drinking water beneficial uses:

- (i) The inhalation correction factor is an adjustment factor that takes into account exposure to hazardous substances that are volatilized and inhaled during showering and other domestic activities. When available, hazardous substance-specific information may be used to estimate this factor;
 - (ii) Where separate toxicity factors (reference doses and carcinogenic potency factors) are available for inhalation and oral exposures, the health hazards associated with the inhalation of hazardous substances in groundwater during showering and other domestic activities may be evaluated separately from the health hazards associated with ingestion of drinking water. In these cases, the groundwater cleanup level based on ingestion of drinking water shall be modified to take into account multiple exposure pathways in accordance with WAC [173-340-708](#)(6);
 - (iii) The toxicity equivalency factor procedures described in WAC [173-340-708](#)(8) may be used for assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins, chlorinated dibenzofurans and polycyclic aromatic hydrocarbons;
 - (iv) Adjustments to the reference dose and cancer potency factor may be made if the requirements in WAC [173-340-708](#)(7) and (8) are met; and
 - (v) Modifications incorporating new science as provided for in WAC [173-340-702](#)(14), (15) and (16).
- (d) **Using modified Method B to evaluate groundwater remediation levels.** In addition to the adjustments allowed under (c) of this subsection, other adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC [173-340-355](#), [173-340-357](#), and [173-340-708](#)(3)(d) and (10)(b).
- (5) **Method C cleanup levels for potable groundwater.**
- (a) **Applicability.** Method C potable groundwater cleanup levels consist of standard and modified cleanup levels as described in this subsection.

The department may approve of both standard and modified Method C groundwater cleanup levels based on drinking water beneficial uses only at sites qualifying under WAC [173-340-706](#)(1).
 - (b) **Standard Method C potable groundwater cleanup levels.** Where the groundwater cleanup level is based on a drinking water beneficial use and the site qualifies for a

Method C groundwater cleanup level, the standard Method C cleanup levels for groundwater shall be at least as stringent as all of the following:

- (i) **Applicable state and federal laws.** Concentrations established under applicable state and federal laws, including the requirements in subsection (3)(b)(ii) of this section;
- (ii) **Protection of surface water beneficial uses.** Concentrations established in accordance with the methods specified in WAC [173-340-730](#) for protecting surface water beneficial uses, unless it can be demonstrated that the hazardous substances are not likely to reach surface water. This demonstration must be based on factors other than implementation of a cleanup action at the site.
- (iii) **Human health protection.** For hazardous substances for which sufficiently protective, health-based standards or criteria have not been established under applicable state and federal laws, those concentrations that protect human health as determined using the following methods:
 - (A) **Noncarcinogens.** Concentrations that are estimated to result in no significant acute or chronic toxic effects on human health and are estimated using Equation 720-1, except that the average body weight shall be 70 kg and the drinking water intake rate shall be two liters/day;
 - (B) **Carcinogens.** Concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in 100,000 (1×10^{-5}), using Equation 720-2;
 - (C) **Petroleum mixtures.** Cleanup levels for petroleum mixtures shall be determined as specified in subsection (4)(b)(iii)(C) of this section except that the average body weight shall be 70 kg and the drinking water rate shall be two liters/day.
- (c) **Modified Method C potable groundwater cleanup levels.** Modified Method C groundwater cleanup levels for drinking water beneficial uses are standard Method C groundwater cleanup levels modified with chemical-specific or site-specific data. The same limitations and adjustments specified for modified Method B in subsection (4)(c) of this section apply to modified Method C groundwater cleanup levels.
- (d) **Using Modified Method C to evaluate groundwater remediation levels.** In addition to the adjustments allowed under (c) of this subsection, other adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC [173-340-355](#), [173-340-357](#), and [173-340-708](#)(3)(d) and (10)(b).
- (6) **Cleanup levels for nonpotable groundwater.**
 - (a) **Applicability.** Groundwater cleanup levels may be established under this subsection only if the contaminated groundwater is not classified as potable under subsection (2) of this section.

- (b) **Requirements.** Cleanup levels shall be established in accordance with either of the following:
- (i) The methods specified in subsections (3), (4) or (5) of this section, as applicable, for protection of drinking water beneficial uses; or
 - (ii) A site-specific risk assessment as provided for under (c) of this subsection for protection of other groundwater beneficial uses.
- (c) **Site-specific risk assessment.**
- (i) **Method B site-specific groundwater cleanup levels.** Where a site-specific risk assessment is used to establish a Method B groundwater cleanup level under (b)(ii) of this subsection, the risk assessment shall conform to the requirements in WAC [173-340-702](#) and [173-340-708](#). The risk assessment shall evaluate all potential exposure pathways and groundwater uses at the site, including potential impacts to persons engaged in site development or utility construction and maintenance activities. The risk assessment shall demonstrate the following:
 - (A) The cleanup levels will meet any applicable state and federal laws (drinking water standards are not applicable to these sites);
 - (B) The cleanup levels will result in no significant acute or chronic toxic effects on human health as demonstrated by not exceeding a hazard quotient of one for individual hazardous substances;
 - (C) The cleanup levels will result in an upper bound on the estimated excess cancer risk that is less than or equal to one in 1,000,000 (1×10^{-6}) for individual hazardous substances;
 - (D) For organic hazardous substances and petroleum products, the cleanup levels comply with the limitation on free product in subsection (7)(d) of this section;
 - (E) The cleanup levels will not exceed the surface water cleanup levels derived under WAC [173-340-730](#) at the groundwater point of compliance or exceed the surface water or sediment quality standards at any point downstream, unless it can be demonstrated that the hazardous substances are not likely to reach surface water. This demonstration must be based on factors other than implementation of a cleanup action at the site; and
 - (F) Where it is demonstrated that hazardous substances are not likely to reach surface water, the use of a groundwater cleanup level less stringent than a surface water cleanup level will not pose a threat to surface water through pathways that could result in groundwater affected by the site entering surface water (such as use of the water for irrigation or discharges from foundation drains or utility corridors).

(ii) **Method C site-specific groundwater cleanup levels.**

- (A) **Applicability.** The department may approve of a site-specific Method C groundwater cleanup level derived under (b)(ii) of this subsection only at sites qualifying under WAC [173-340-706](#)(1).
- (B) **Requirements.** Where a site-specific risk assessment is used to establish a Method C groundwater cleanup level under (b)(ii) of this subsection, the site-specific risk assessment shall comply with the requirements in (c)(i) of this subsection except that the level of risk for individual carcinogens shall be one in 100,000 (1×10^{-5}).

(iii) **Limitations on the use of site-specific risk assessment.** If the site-specific risk assessment results in a Method B or Method C groundwater cleanup level that exceeds the applicable potable groundwater cleanup level derived under (b)(i) of this subsection, then the potable groundwater cleanup level shall be used unless the following conditions are met:

- (A) All potentially affected property owners, local governments, Indian tribes and water purveyors with jurisdiction in the area potentially affected by the groundwater contamination have been provided a notice of the proposal and provided an opportunity to comment. The notice shall specifically ask for information on existing and planned uses of the groundwater. The notice shall be in addition to any notice provided under WAC [173-340-600](#). In determining whether it is appropriate to use a cleanup level less stringent than the potable groundwater cleanup level, the department will give greater weight to information based on an adopted or pending plan or similar preexisting document.
- (B) For sites where the groundwater is classified as nonpotable under WAC 173-340-720(2)(d), the cleanup action includes institutional controls complying with WAC [173-340-440](#) that will prevent the use of contaminated groundwater for drinking water purposes at any point between the source of hazardous substances and the point(s) of entry of groundwater into the surface water.
- (C) For sites where the risk assessment includes assumptions of restricted use or contact with the groundwater (other than for the reason of being nonpotable), or restricted use of the land above the groundwater, the cleanup action includes institutional controls complying with WAC [173-340-440](#) that will implement the restrictions.

(7) **Adjustments to cleanup levels.**

- (a) **Total site risk adjustments.** Groundwater cleanup levels for individual hazardous substances developed in accordance with subsection (4), (5) or (6) of this section, including those based on applicable state and federal laws, shall be adjusted downward

to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one or the total excess cancer risk would exceed one in 100,000 (1×10^{-5}). These adjustments shall be made in accordance with the procedures in WAC [173-340-708](#)(5) and (6). In making these adjustments, the hazard index shall not exceed one and the total excess cancer risk shall not exceed one in 100,000 (1×10^{-5}).

- (b) **Adjustments to applicable state and federal laws.** Where a cleanup level developed under subsection (3), (4), (5), or (6) of this section is based on an applicable state or federal law and the level of risk upon which the standard is based exceeds an excess cancer risk of one in 100,000 (1×10^{-5}) or a hazard index of one, the cleanup level shall be adjusted downward so that the total excess cancer risk does not exceed one in 100,000 (1×10^{-5}) and the hazard index does not exceed one at the site.
 - (c) **Natural background and PQL considerations.** Cleanup levels determined under subsection (3), (4), (5), or (6) of this section, including cleanup levels adjusted under subsection (7)(a) and (b) of this section, shall not be set at levels below the practical quantitation limit or natural background concentrations, whichever is higher. See WAC [173-340-707](#) and [173-340-709](#) for additional requirements pertaining to practical quantitation limits and natural background.
 - (d) **Nonaqueous phase liquid limitation.** For organic hazardous substances and total petroleum hydrocarbons, the cleanup level determined under subsection (3), (4), (5), or (6) shall not exceed a concentration that would result in nonaqueous phase liquid being present in or on the groundwater. Physical observations of groundwater at or above the cleanup level, such as the lack of a film, sheen, or discoloration of the groundwater or lack of sludge or emulsion in the groundwater, may be used to determine compliance with this requirement.
- (8) **Point of compliance.**
- (a) **Point of compliance defined.** For groundwater, the point of compliance is the point or points where the groundwater cleanup levels established under subsection (3), (4), (5), or (6) of this section must be attained for a site to be in compliance with the cleanup standards. Groundwater cleanup levels shall be attained in all groundwaters from the point of compliance to the outer boundary of the hazardous substance plume.
 - (b) **Standard point of compliance for all sites.** The standard point of compliance shall be established throughout the site from the uppermost level of the saturated zone extending vertically to the lowest most depth which could potentially be affected by the site.
 - (c) **Conditional point of compliance.** Where it can be demonstrated under WAC [173-340-350](#) through [173-340-390](#) that it is not practicable to meet the cleanup level throughout the site within a reasonable restoration time frame, the department may approve a conditional point of compliance that shall be as close as practicable to the

source of hazardous substances, and except as provided under (d) of this subsection, not to exceed the property boundary. Where a conditional point of compliance is proposed, the person responsible for undertaking the cleanup action shall demonstrate that all practicable methods of treatment are to be used in the site cleanup.

(d) Off-property conditional point of compliance. A conditional point of compliance shall not exceed the property boundary except in the three situations described below. In each of these three situations the person responsible for undertaking the cleanup action shall demonstrate that, in addition to making the demonstration required by (c) of this subsection, the following requirements are met:

- (i) Properties abutting surface water.** Where the groundwater cleanup level is based on protection of surface water beneficial uses under subsection (3), (4), (5), or (6) of this section, and the property containing the source of contamination directly abuts the surface water, the department may approve a conditional point of compliance that is located within the surface water as close as technically possible to the point or points where groundwater flows into the surface water subject to the following conditions:
- (A)** It has been demonstrated that the contaminated groundwater is entering the surface water and will continue to enter the surface water even after implementation of the selected cleanup action;
 - (B)** It has been demonstrated under WAC [173-340-350](#) through [173-340-390](#) that it is not practicable to meet the cleanup level at a point within the groundwater before entering the surface water, within a reasonable restoration time frame;
 - (C)** Use of a mixing zone under WAC [173-201A-100](#) to demonstrate compliance with surface water cleanup levels shall not be allowed;
 - (D)** Groundwater discharges shall be provided with all known available and reasonable methods of treatment before being released into surface waters;
 - (E)** Groundwater discharges shall not result in violations of sediment quality values published in chapter [173-204](#) WAC;
 - (F)** Groundwater and surface water monitoring shall be conducted to assess the long-term performance of the selected cleanup action including potential bioaccumulation problems resulting from surface water concentrations below method detection limits; and
 - (G)** Before approving the conditional point of compliance, a notice of the proposal shall be provided to the natural resource trustees, the Washington state department of natural resources and the United States Army Corps of Engineers. The notice shall be in addition to any

notice provided under WAC [173-340-600](#) and invite comments on the proposal.

- (ii) **Properties near, but not abutting, surface water.** Where the groundwater cleanup level is based on protection of surface water beneficial uses under subsection (3), (4), (5), or (6) of this section and the property that is the source of the contamination is located near, but does not directly abut, a surface water body, the department may approve a conditional point of compliance that is located as close as practicable to the source, not to exceed the point or points where the groundwater flows into the surface water.

For a conditional point of compliance to be approved under this provision the conditions specified in (d)(i) of this section must be met and the affected property owners between the source of contamination and the surface water body must agree in writing to the use of the conditional point of compliance. Also, if the groundwater cleanup level is not exceeded in the groundwater prior to its entry into the surface water, the conditional point of compliance cannot extend beyond the extent of groundwater contamination above the cleanup level at the time the department approves the conditional point of compliance.

- (iii) **Area-wide conditional point of compliance.** As part of remedy selection, the department may approve an area-wide conditional point of compliance to address an area-wide groundwater contamination problem. The area-wide conditional point(s) of compliance shall be as close as practicable to each source of hazardous substances, not to exceed the extent of groundwater contamination at the time the department approves an area-wide conditional point of compliance.

This provision may be applied only at areas that are affected by hazardous substances released from multiple sources that have resulted in commingled plumes of contaminated groundwater that are not practicable to address separately. A site may have more than one area-wide conditional point of compliance to address multiple sources and types of contaminants. An area-wide conditional point of compliance may be approved under this provision only if all of the following conditions have been met:

- (A) The person conducting the cleanup action has complied with WAC [173-340-350](#) through [173-340-390](#), including a demonstration that it is not practicable to meet a point of compliance throughout the groundwater contamination within a reasonable restoration time frame;
- (B) A plan has been developed for implementation of the cleanup action, including a description of how any necessary access to the affected properties will be obtained;

- (C) If the contaminated groundwater is considered to be potable under WAC 173-340-720(2), current developments in the area encompassed by the area-wide conditional point of compliance and any other areas potentially affected by the groundwater contamination are served by a public water system that obtains its water from an offsite source and it can be demonstrated that the water system has sufficient capacity to serve future development in these areas. This demonstration may be made by obtaining a written statement to this effect from the water system operator;
 - (D) All property owners, Indian tribes, local governments, and water purveyors with jurisdiction in the area potentially affected by the groundwater contamination, have been provided a notice of the proposal to establish an area-wide conditional point of compliance and provided an opportunity to comment. The notice shall specifically ask for information on existing and planned uses of the groundwater. The notice shall be in addition to any notice provided under WAC [173-340-600](#). The department will give greater weight to information based on an adopted or pending plan or similar preexisting document. When the department is providing technical assistance under WAC [173-340-515](#), the department shall also provide an opportunity to comment to the public through the *Contaminated Site Register* before issuing a written opinion.
 - (E) Other conditions as determined by the department on a case-by-case basis.
- (e) **Monitoring wells and surface water compliance.**
 - (i) The department may require or approve the use of upland monitoring wells located between the surface water and the source of contamination to establish compliance where a conditional point of compliance has been established under subsection (8)(d)(i) or (ii) of this section.
 - (ii) Where such monitoring wells are used, the department should consider an estimate of natural attenuation between the monitoring well and the point or points where groundwater flows into the surface water in evaluating whether compliance has been achieved.
 - (iii) When evaluating how much, if any, natural attenuation will occur, the department shall consider site-specific factors including:
 - (A) Whether the groundwater could reach the surface water in ways that would not provide for natural attenuation within the groundwater flow system (such as short circuiting through high permeability zones, utility corridors or foundation drains); and

- (B) Whether changes to the groundwater chemistry due to natural attenuation processes would cause an exceedance of surface water or sediment quality standards.

(9) Compliance monitoring.

- (a) When groundwater cleanup levels have been established at a site, sampling of the groundwater shall be conducted to determine if compliance with the groundwater cleanup levels has been achieved. Compliance with groundwater cleanup levels shall be determined by analysis of groundwater samples representative of the groundwater. Surface water analysis, bioassays or other biomonitoring methods may also be required where the groundwater cleanup level is based on protection of surface water. Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC [173-340-410](#). The sample design shall provide data that are representative of the site.
- (b) Analyses shall be conducted on unfiltered groundwater samples, unless it can be demonstrated that a filtered sample provides a more representative measure of groundwater quality. The department expects that filtering will generally be acceptable for iron and manganese and other naturally occurring inorganic substances where:
 - (i) A properly constructed monitoring well cannot be sufficiently developed to provide low turbidity water samples;
 - (ii) Due to the natural background concentration of hazardous substances in the aquifer material, unfiltered samples would not provide a representative measure of groundwater quality; and
 - (iii) Filtering is performed in the field with all practicable measures taken to avoid exposing the groundwater sample to the ambient air before filtering.
- (c) The data analysis and evaluation procedures used to evaluate compliance with groundwater cleanup levels shall be defined in a compliance monitoring plan prepared under WAC [173-340-410](#). These procedures shall meet the following general requirements:
 - (i) Methods of data analysis shall be consistent with the sampling design;
 - (ii) When cleanup levels are based on requirements specified in applicable state and federal laws, the procedures for evaluating compliance that are specified in those requirements shall be used to evaluate compliance with cleanup levels unless those procedures conflict with the intent of this section;
 - (iii) Where procedures for evaluating compliance are not specified in an applicable state and federal law, statistical methods used shall be appropriate for the distribution of sampling data for each hazardous substance. If the distributions for hazardous substances differ, more than one statistical method may be required;

- (iv) Compliance with groundwater cleanup levels shall be determined for each groundwater monitoring well or other monitoring points such as a spring;
 - (v) The data analysis procedures identified in the compliance monitoring plan shall specify the statistical parameters to be used to determine compliance with groundwater cleanup levels.

 - (A) For cleanup levels based on short-term or acute toxic effects on human health or the environment, an upper percentile concentration shall be used to evaluate compliance with groundwater cleanup levels.
 - (B) For cleanup levels based on chronic or carcinogenic threats, the true mean concentration shall be used to evaluate compliance with groundwater cleanup levels.
 - (vi) When active groundwater restoration is performed, or containment technologies are used that incorporate active pumping of groundwater, compliance with groundwater cleanup levels shall be determined when the groundwater characteristics at the site are no longer influenced by the cleanup action.
- (d) When data analysis procedures for evaluating compliance are not specified in an applicable state or federal law, the following procedures shall be used:
- (i) A confidence interval approach that meets the following requirements:

 - (A) The upper one-sided 95 percent confidence limit on the true mean groundwater concentration shall be less than the groundwater cleanup level. For lognormally distributed data, the upper one-sided 95 percent confidence limit shall be calculated using Land's method; and
 - (B) Data shall be assumed to be lognormally distributed unless this assumption is rejected by a statistical test. If a lognormal distribution is inappropriate, data shall be assumed to be normally distributed unless this assumption is rejected by a statistical test. The W test, D'Agostino's test, or, censored probability plots, as appropriate for the data, shall be the statistical methods used to determine whether the data is lognormally or normally distributed.
 - (ii) Evaluations conducted under subsection (9)(c)(v)(A) of this subsection may use a parametric test for percentiles based on tolerance intervals to test the proportion of groundwater samples having concentrations less than the groundwater cleanup level. When using this method, the true proportion of samples that do not exceed the groundwater cleanup level shall not be less than 90 percent. Statistical tests shall be performed with a Type I error level of 0.05; or
 - (iii) Other statistical methods approved by the department.

- (e)** All data analysis methods used, including those specified in state or federal law, must meet the following requirements:

 - (i)** No single sample concentration shall be greater than two times the groundwater cleanup level. Higher exceedances to control false positive error rates at five percent may be approved by the department when the cleanup level is based on background concentrations; and
 - (ii)** Less than 10 percent of the sample concentrations shall exceed the groundwater cleanup level during a representative sampling period. Higher exceedances to control false positive error rates at five percent may be approved by the department when the cleanup level is based on background concentrations; and
- (f)** When using statistical methods to demonstrate compliance with groundwater cleanup levels, the following procedures shall be used for measurements below the practical quantitation limit:

 - (i)** Measurements below the method detection limit shall be assigned a value equal to one-half the method detection limit when not more than 15 percent of the measurements are below the practical quantitation limit.
 - (ii)** Measurements above the method detection limit but below the practical quantitation limit shall be assigned a value equal to the method detection limit when not more than 15 percent of the measurements are below the practical quantitation limit.
 - (iii)** When between 15 and 50 percent of the measurements are below the practical quantitation limit and the data are assumed to be lognormally or normally distributed, Cohen's method shall be used to calculate a corrected mean and standard deviation for use in calculating an upper confidence limit on the true mean groundwater concentration.
 - (iv)** If more than 50 percent of the measurements are below the practical quantitation limit, the largest value in the data set shall be used in place of an upper confidence limit on the true mean groundwater calculation.
 - (v)** If a hazardous substance or petroleum fraction has never been detected in any sample at a site and these substances are not suspected of being present at the site based on site history and other knowledge, that hazardous substance or petroleum fraction may be excluded from the statistical analysis.
 - (vi)** The department may approve alternate statistical procedures for handling nondetected values or values below the practical quantitation limit.

WAC 173-340-730 Surface water cleanup standards.**(1) General considerations.**

- (a)** Surface water cleanup levels shall be based on estimates of the highest beneficial use and the reasonable maximum exposure expected to occur under both current and potential future site use conditions. The classification and the highest beneficial use of a surface water body, determined in accordance with chapter [173-201A](#) WAC, shall be used to establish the reasonable maximum exposure for that water body. Surface water cleanup levels shall use this presumed exposure scenario and shall be established in accordance with this section.
- (b)** In the event of a release of a hazardous substance to surface water from a site, a cleanup action that complies with this chapter shall be conducted to address all areas of the site where the concentration of the hazardous substances in the surface water exceeds cleanup levels.
- (c)** Surface water cleanup levels established under this section apply to those surface waters of the state affected or potentially affected by releases of hazardous substances from sites addressed under this chapter. The department does not expect that cleanup standards will be applied to stormwater runoff that is in the process of being conveyed to a treatment system.
- (d)** Surface water cleanup levels shall be established at concentrations that do not directly or indirectly cause violations of groundwater, soil, sediment, or air cleanup standards established under this chapter or other applicable state and federal laws. A site that qualifies for a Method C surface water cleanup level under this section does not necessarily qualify for a Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium.
- (e)** The department may require more stringent cleanup levels than specified in this section where necessary to protect other beneficial uses or otherwise protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC [173-340-702](#) and [173-340-708](#).

(2) Method A surface water cleanup levels.

- (a) Applicability.** Method A surface water cleanup levels may only be used at sites that qualify under WAC [173-340-704](#)(1).
- (b) General requirements.** Method A surface water cleanup levels shall be at least as stringent as all of the following:
 - (i)** Concentrations established under applicable state and federal laws, including the following requirements:
 - (A)** All water quality criteria published in the water quality standards for surface waters of the state of Washington, chapter [173-201A](#) WAC, as amended;

- (B) Water quality criteria based on the protection of aquatic organisms (acute and chronic criteria) and human health published under section 304 of the Clean Water Act; and
 - (C) National toxics rule (40 C.F.R. Part 131);
 - (ii) For surface waters that are classified as suitable for use as a domestic water supply under chapter [173-201A](#) (excluding marine waters), concentrations derived using the methods specified in WAC [173-340-720](#) for drinking water beneficial uses; and
 - (iii) For a hazardous substance deemed an indicator hazardous substance for surface water under WAC [173-340-708](#)(2) and for which there is no value in applicable state and federal laws, a concentration that does not exceed the natural background concentration or the practical quantitation limit, subject to the limitations in this chapter.

(3) Method B surface water cleanup levels.

- (a) **Applicability.** Method B surface water cleanup levels consist of standard and modified cleanup levels as described in this subsection. Either standard or modified Method B surface water cleanup levels may be used at any site.
- (b) **Standard Method B surface water cleanup levels.** Standard Method B cleanup levels for surface waters shall be at least as stringent as all of the following:
 - (i) **Applicable state and federal laws.** Concentrations established under applicable state and federal laws, including the following requirements:
 - (A) All water quality criteria published in the water quality standards for surface waters of the state of Washington, chapter [173-201A](#) WAC;
 - (B) Water quality criteria based on the protection of aquatic organisms (acute and chronic criteria) and human health published under section 304 of the Clean Water Act unless it can be demonstrated that such criteria are not relevant and appropriate for a specific surface water body or hazardous substance; and
 - (C) National toxics rule (40 C.F.R. Part 131);
 - (ii) **Environmental effects.** For hazardous substances for which environmental effects-based concentrations have not been established under applicable state or federal laws, concentrations that are estimated to result in no adverse effects on the protection and propagation of wildlife, fish, and other aquatic life. Whole effluent toxicity testing using the protocols described in chapter [173-205](#) WAC may be used to make this demonstration for fish and aquatic life;
 - (iii) **Human health protection.** For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under

applicable state and federal laws, those concentrations that protect human health as determined by the following methods:

- (A) **Noncarcinogens.** For surface waters that support or have the potential to support fish or shellfish populations, concentrations which are estimated to result in no acute or chronic toxic effects on human health as determined using Equation 730-1.

Equation 730-1

Surface water cleanup level (ug/l)	=	RfD x ABW x UCF1 x UCF2 x HQ x AT
		BCF x FCR x FDF x ED
Where:		
RfD	=	Reference dose as specified in WAC 173-340-708 (7) (mg/kg-day)
ABW	=	Average body weight during the exposure duration (70 kg)
UCF1	=	Unit conversion factor (1,000 ug/mg)
UCF2	=	Unit conversion factor (1,000 grams/kg)
BCF	=	Bioconcentration factor as defined in WAC 173-340-708 (9) (liters/kilogram)
FCR	=	Fish consumption rate (54 grams/day)
FDF	=	Fish diet fraction (0.5) (unitless)
HQ	=	Hazard quotient (1) (unitless)
AT	=	Averaging time (30 years)
ED	=	Exposure duration (30 years)

- (B) **Carcinogens.** For surface waters which support or have the potential to support fish or shellfish populations, concentrations that are estimated to result in an excess cancer risk less than or equal to one in 1,000,000 (1×10^{-6}) as determined using Equation 730-2.

Equation 730-2

Surface water cleanup level (ug/l)	=	RISK x ABW x AT x UCF1 x UCF2
		CPF x BCF x FCR x FDF x ED
Where:		
CPF	=	Carcinogenic potency factor as specified in WAC 173-340-708 (8) (kg-day/mg)
RISK	=	Acceptable cancer risk level (1 in 1,000,000) (unitless)
ABW	=	Average body weight during the exposure duration (70 kg)
AT	=	Averaging time (75 years)
UCF1	=	Unit conversion factor (1,000 ug/mg)
UCF2	=	Unit conversion factor (1,000 grams/kg)
BCF	=	Bioconcentration factor as defined in WAC 173-340-708 (9) (liters/kilogram)
FCR	=	Fish consumption rate (54 grams/day)
FDF	=	Fish diet fraction (0.5) (unitless)
ED	=	Exposure duration (30 years)

- (C) **Petroleum mixtures.** For noncarcinogenic effects of petroleum mixtures, a total petroleum hydrocarbon cleanup level shall be calculated using Equation 730-1 and by taking into account the additive effects of the petroleum fractions and volatile hazardous substances present in the petroleum mixture. As an alternative to this calculation, the total petroleum hydrocarbon cleanup levels in Table 720-1 may be used. Cleanup levels for other noncarcinogens and known or suspected carcinogens within the petroleum mixture shall be calculated using Equations 730-1 and 730-2. See Table 830-1 for the analyses required for various petroleum products to use this method; and
- (iv) **Drinking water considerations.** For surface waters that are classified as suitable for use as a domestic water supply under chapter [173-201A](#) WAC, concentrations derived using the methods specified in WAC [173-340-720](#) for drinking water beneficial uses.
- (c) **Modified Method B surface water cleanup levels.** Modified Method B surface water cleanup levels are standard Method B surface water cleanup levels modified with chemical-specific or site-specific data. When making these adjustments, the resultant cleanup levels shall meet applicable state and federal laws and health risk levels required for standard Method B surface water cleanup levels. Changes to exposure assumptions must comply with WAC [173-340-708](#)(10). The following adjustments may be made to the default assumptions in the standard Method B equations to derive modified Method B surface water cleanup levels:
- (i) Adjustments to the reference dose and cancer potency factor may be made if the requirements in WAC [173-340-708](#)(7) and (8) are met;

- (ii) Adjustments to the bioconcentration factor may be made if the requirements in WAC [173-340-708](#)(9) are met;
 - (iii) Where a numeric environmental effects-based water quality standard does not exist, bioassays that use methods other than those specified in chapter [173-205](#) WAC may be approved by the department to establish concentrations for the protection of fish and other aquatic life;
 - (iv) The toxicity equivalency factor procedures described in WAC [173-340-708](#)(8) may be used for assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins, chlorinated dibenzofurans and polycyclic aromatic hydrocarbons; and
 - (v) Modifications incorporating new science as provided for in WAC [173-340-702](#)(14), (15) and (16).
 - (d) **Using modified Method B to evaluate surface water remediation levels.** In addition to the adjustments allowed under subsection (3)(c) of this section, adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC [173-340-355](#), [173-340-357](#), and [173-340-708](#)(3)(d) and (10)(b).
- (4) **Method C surface water cleanup levels.**
- (a) **Applicability.** Method C surface water cleanup levels consist of standard and modified cleanup levels as described in this subsection. Either standard or modified Method C cleanup levels may be approved by the department if the person undertaking the cleanup action can demonstrate that such levels are consistent with applicable state and federal laws, that all practicable methods of treatment have been used, that institutional controls are implemented in accordance with WAC [173-340-440](#), and that one or more of the conditions in WAC [173-340-706](#)(1) exist.
 - (b) **Standard Method C surface water cleanup levels.** Method C cleanup levels for surface waters shall be at least as stringent as all of the following:
 - (i) **Applicable state and federal laws.** Concentrations established under applicable state and federal laws, including the requirements identified in subsection (3)(b)(i) of this section;
 - (ii) **Environmental effects.** For hazardous substances for which an environmental effects based concentration has not been established under applicable state or federal laws, those concentrations which are estimated to result in no significant adverse effects on the protection and propagation of wildlife, fish and other aquatic life. Whole effluent toxicity testing using the protocols described in chapter [173-205](#) WAC may be used to make this demonstration for fish and aquatic life;
 - (iii) **Human health protection.** For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under

applicable state and federal laws, those concentrations which protect human health as determined by the following methods:

- (A) **Noncarcinogens.** For surface waters that support or have the potential to support fish or shellfish populations, concentrations that are estimated to result in no significant acute or chronic toxic effects on human health and are estimated in accordance with Equation 730-1 except that the fish diet fraction shall be 20 percent (0.2);
- (B) **Carcinogens.** For surface waters that support or have the potential to support fish or shellfish populations, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in 100,000 (1×10^{-5}) and are estimated in accordance with Equation 730-2 except that the fish diet fraction shall be 20 percent (0.2);
- (C) **Petroleum mixtures.** Cleanup levels for petroleum mixtures shall be calculated as specified in subsection (3)(b)(iii)(C) of this section, except that the fish diet fraction shall be 20 percent (0.2); and
- (iv) **Drinking water considerations.** For surface waters that are classified as suitable for use as a domestic water supply under chapter [173-201A](#) WAC, concentrations derived using the methods specified for drinking water beneficial uses in WAC [173-340-720](#).
- (c) **Modified Method C surface water cleanup levels.** Modified Method C surface water cleanup levels are standard Method C surface water cleanup levels modified with chemical-specific or site-specific data. The same limitations and adjustments specified for modified Method B in subsection (3)(c) of this section apply to modified Method C surface water cleanup levels.
- (d) **Using modified Method C to evaluate surface water remediation levels.** In addition to the adjustments allowed under subsection (4)(c) of this section, adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC [173-340-355](#), [173-340-357](#), and [173-340-708](#)(3)(d) and (10)(b).
- (5) **Adjustments to cleanup levels.**

 - (a) **Total site risk adjustments.** Surface water cleanup levels for individual hazardous substances developed in accordance with subsections (3) and (4) of this section, including those based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one and the total excess cancer risk would exceed one in 100,000 (1×10^{-5}). These adjustments shall be made in accordance with the procedures specified in WAC [173-340-708](#)(5) and (6). In making these adjustments, the hazard index shall not exceed one and the total excess cancer risk shall not exceed one in 100,000 (1×10^{-5}).

- (b) **Adjustments to applicable state and federal laws.** Where a cleanup level developed under subsection (2), (3) or (4) of this section is based on an applicable state or federal law and the level of risk upon which the standard is based exceeds an excess cancer risk of one in 100,000 (1×10^{-5}) or a hazard index of one, the cleanup level shall be adjusted downward so that the total excess cancer risk does not exceed one in 100,000 (1×10^{-5}) and the hazard index does not exceed one at the site.
 - (c) **Natural background and PQL considerations.** Cleanup levels determined under subsections (2), (3) and (4) of this section, including cleanup levels adjusted under subsection (5)(a) and (b) of this subsection, shall not be set at levels below the practical quantitation limit or natural background concentration, whichever is higher. See WAC [173-340-707](#) and [173-340-709](#) for additional requirements pertaining to practical quantitation limits and natural background concentrations.
 - (d) **Nonaqueous phase liquid limitation.** For organic hazardous substances and petroleum hydrocarbons, the cleanup level shall not exceed a concentration that would result in nonaqueous phase liquid being present in or on the surface water. Physical observations of surface water at or above the cleanup level, such as the lack of a film, sheen, discoloration, sludge or emulsion in the surface water or adjoining shoreline, may be used to determine compliance with this requirement.
- (6) **Point of compliance.**
- (a) The point of compliance for the surface water cleanup levels shall be the point or points at which hazardous substances are released to surface waters of the state unless the department has authorized a mixing zone in accordance with chapter [173-201A](#) WAC.
 - (b) Where hazardous substances are released to the surface water as a result of groundwater flows, no mixing zone shall be allowed to demonstrate compliance with surface water cleanup levels. See WAC [173-340-720](#)(8)(d) for additional requirements for sites where contaminated groundwater is flowing into surface water.
 - (c) As used in this subsection, "mixing zone" means that portion of a surface water body adjacent to an effluent outfall where mixing results in dilution of the effluent with the receiving water. See chapter [173-201A](#) WAC for additional information on mixing zones.
- (7) **Compliance monitoring.**
- (a) When surface water cleanup levels have been established at a site, sampling of the surface water shall be conducted to determine if compliance with the surface water cleanup levels has been achieved. Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC [173-340-410](#). The sample design shall provide data that are representative of the site.
 - (b) The data analysis and evaluation procedures used to evaluate compliance with surface water cleanup levels shall be defined in a compliance monitoring plan prepared under WAC [173-340-410](#).

- (c)** Compliance with surface water cleanup standards shall be determined by analyses of unfiltered surface water samples, unless it can be demonstrated that a filtered sample provides a more representative measure of surface water quality.
- (d)** When surface water cleanup levels are based on requirements specified in applicable state and federal laws, the procedures for evaluating compliance that are specified in those requirements shall be used to evaluate compliance with surface water cleanup levels unless those procedures conflict with the intent of this section.
- (e)** Where procedures for evaluating compliance are not specified in an applicable state and federal law, compliance with surface water cleanup levels shall be evaluated using procedures approved by the department. Where statistical methods are used to evaluate compliance, the statistical methods shall be appropriate for the distribution of the hazardous substance sampling data. If the distribution of the hazardous substance sampling data is inappropriate for statistical methods based on a normal distribution, then the data may be transformed. If the distributions of individual hazardous substances differ, more than one statistical method may be required.
- (f)** Sampling and analysis of fish tissue, shellfish, or other aquatic organisms and sediments may be required to supplement water column sampling during compliance monitoring.

WAC 173-340-740 Unrestricted land use soil cleanup standards.**(1) General considerations.**

- (a)** Presumed exposure scenario soil cleanup levels shall be based on estimates of the reasonable maximum exposure expected to occur under both current and future site use conditions. The department has determined that residential land use is generally the site use requiring the most protective cleanup levels and that exposure to hazardous substances under residential land use conditions represents the reasonable maximum exposure scenario. Unless a site qualifies for use of an industrial soil cleanup level under WAC [173-340-745](#), soil cleanup levels shall use this presumed exposure scenario and be established in accordance with this section.
- (b)** In the event of a release of a hazardous substance to the soil at a site, a cleanup action complying with this chapter shall be conducted to address all areas where the concentration of hazardous substances in the soil exceeds cleanup levels at the relevant point of compliance.
- (c)** The department may require more stringent soil cleanup standards than required by this section where, based on a site-specific evaluation, the department determines that this is necessary to protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC [173-340-702](#) and [173-340-708](#). The following are examples of situations that may require more stringent cleanup levels.
 - (i)** Concentrations that eliminate or substantially reduce the potential for food chain contamination;
 - (ii)** Concentrations that eliminate or substantially reduce the potential for damage to soils or biota in the soils which could impair the use of soils for agricultural or silvicultural purposes;
 - (iii)** Concentrations necessary to address the potential health risk posed by dust at a site;
 - (iv)** Concentrations necessary to protect the groundwater at a particular site;
 - (v)** Concentrations necessary to protect nearby surface waters from hazardous substances in runoff from the site; and
 - (vi)** Concentrations that eliminate or minimize the potential for the accumulation of vapors in buildings or other structures.
- (d)** Relationship between soil cleanup levels and other cleanup standards. Soil cleanup levels shall be established at concentrations that do not directly or indirectly cause violations of groundwater, surface water, sediment, or air cleanup standards established under this chapter or applicable state and federal laws. A property that qualifies for a Method C soil cleanup level under WAC [173-340-745](#) does not necessarily qualify for a

Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium.

(2) Method A soil cleanup levels for unrestricted land use.

- (a) Applicability.** Method A soil cleanup levels may only be used at sites qualifying under WAC [173-340-704](#)(1).
- (b) General requirements.** Method A soil cleanup levels shall be at least as stringent as all of the following:
 - (i)** Concentrations in Table 740-1 and compliance with the corresponding footnotes;
 - (ii)** Concentrations established under applicable state and federal laws;
 - (iii)** Concentrations that result in no significant adverse effects on the protection and propagation of terrestrial ecological receptors using the procedures specified in WAC [173-340-7490](#) through [173-340-7493](#), unless it is demonstrated under those sections that establishing a soil concentration is unnecessary; and
 - (iv)** For a hazardous substance that is deemed an indicator hazardous substance under WAC [173-340-708](#)(2) and for which there is no value in Table 740-1 or applicable state and federal laws, a concentration that does not exceed the natural background concentration or the practical quantification limit, subject to the limitations in this chapter.

(3) Method B soil cleanup levels for unrestricted land use.

- (a) Applicability.** Method B soil cleanup levels consist of standard and modified cleanup levels determined using the procedures in this subsection. Either standard or modified Method B soil cleanup levels may be used at any site.
- (b) Standard Method B soil cleanup levels.** Standard Method B cleanup levels for soils shall be at least as stringent as all of the following:
 - (i) Applicable state and federal laws.** Concentrations established under applicable state and federal laws;
 - (ii) Environmental protection.** Concentrations that result in no significant adverse effects on the protection and propagation of terrestrial ecological receptors established using the procedures specified in WAC [173-340-7490](#) through [173-340-7494](#) unless it is demonstrated under those sections that establishing a soil concentration is unnecessary.
 - (iii) Human health protection.** For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations that protect human health as determined by evaluating the following exposure pathways:

- (A) **Groundwater protection.** Concentrations that will not cause contamination of groundwater at levels which exceed groundwater cleanup levels established under WAC [173-340-720](#) as determined using the methods described in WAC [173-340-747](#).
- (B) **Soil direct contact.** Concentrations that, due to direct contact with contaminated soil, are estimated to result in no acute or chronic noncarcinogenic toxic effects on human health using a hazard quotient of one and concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in 1,000,000 (1×10^{-6}). Equations 740-1 and 740-2 and the associated default assumptions shall be used to calculate the concentration for direct contact with contaminated soil.
- (I) **Noncarcinogens.** For noncarcinogenic toxic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 740-1. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

Equation 740-1

Soil cleanup level = (mg/kg)	RfD x ABW x UCF x HQ x AT	
	SIR x AB1 x EF x ED	
Where:		
RfD	=	Reference dose as defined in WAC <u>173-340-708</u> (7) (mg/kg-day)
ABW	=	Average body weight over the exposure duration (16 kg)
UCF	=	Unit conversion factor (1,000,000 mg/kg)
SIR	=	Soil ingestion rate (200 mg/day)
AB1	=	Gastrointestinal absorption fraction (1.0) (unitless)
EF	=	Exposure frequency (1.0) (unitless)
HQ	=	Hazard quotient (1) (unitless)
AT	=	Averaging time (6 years)
ED	=	Exposure duration (6 years)

- (II) **Carcinogens.** For carcinogenic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 740-2. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

Equation 740-2

Soil cleanup level = (mg/kg)	RISK x ABW x AT x UCF	
	CPF x SIR x AB1 x ED x EF	
Where:		
RISK	=	Acceptable cancer risk level (1 in 1,000,000) (unitless)
ABW	=	Average body weight over the exposure duration (16 kg)
AT	=	Averaging time (75 years)
UCF	=	Unit conversion factor (1,000,000 mg/kg)
CPF	=	Carcinogenic potency factor as defined in WAC <u>173-340-708</u> (8) (kg-day/mg)
SIR	=	Soil ingestion rate (200 mg/day)
AB1	=	Gastrointestinal absorption fraction (1.0) (unitless). May use 0.6 for mixtures of dioxins and/or furans
ED	=	Exposure duration (6 years)
EF	=	Exposure frequency (1.0) (unitless)

- (III) **Petroleum mixtures.** For noncarcinogenic effects of petroleum mixtures, a total petroleum hydrocarbon cleanup level shall be calculated taking into account the additive effects of the petroleum fractions and volatile organic compounds substances present in the petroleum mixture. Equation 740-3 shall be used for this calculation. This equation takes into account concurrent exposure due to ingestion and dermal contact with petroleum contaminated soils. Cleanup levels for other noncarcinogens and known or suspected carcinogens within the petroleum mixture shall be calculated using Equations 740-4 and 740-5. See Table 830-1 for the analyses required for various petroleum products to use this method.

Equation 740-3

$$C_{\text{soil}} = \frac{HI \times ABW \times AT}{EF \times ED \left[\left(\frac{SIR \times AB1}{10^6 \text{ mg/kg}} \sum_{i=1}^n \frac{F(i)}{RfDo(i)} \right) + \left(\frac{SA \times AF}{10^6 \text{ mg/kg}} \sum_{i=1}^n \frac{F(i) \times ABS(i)}{RfDd(i)} \right) \right]}$$

Where:		
C_{soil}	=	TPH soil cleanup level (mg/kg)
HI	=	Hazard index (1) (unitless)
ABW	=	Average body weight over the exposure duration (16 kg)
AT	=	Averaging time (6 years)
EF	=	Exposure frequency (1.0) (unitless)
ED	=	Exposure duration (6 years)
SIR	=	Soil ingestion rate (200 mg/day)
AB1	=	Gastrointestinal absorption fraction (1.0) (unitless)
F(i)	=	Fraction (by weight) of petroleum component (i) (unitless)
SA	=	Dermal surface area (2,200 cm ²)
AF	=	Adherence factor (0.2 mg/cm ² -day)
ABS	=	Dermal absorption fraction for petroleum component (i) (unitless). May use chemical-specific values or the following defaults: <ul style="list-style-type: none"> • 0.0005 for volatile petroleum components with vapor pressure > = benzene • 0.03 for volatile petroleum components with vapor pressure < benzene • 0.1 for other petroleum components
RfDo(i)	=	Oral reference dose of petroleum component (i) as defined in WAC 173-340-708 (7) (mg/kg-day)
RfDd(i)		Dermal reference dose for petroleum component (i) (mg/kg-day) derived by RfDo x GI
GI	=	Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults: <ul style="list-style-type: none"> • 0.8 for volatile petroleum components • 0.5 for other petroleum components
n	=	The number of petroleum components (petroleum fractions plus volatile organic compounds with an RfD) present in the petroleum mixture. (See Table 830-1.)

- (C) **Soil vapors.** The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:
- (I) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of groundwater for drinking water beneficial use under WAC [173-340-747](#)(6) using the default assumptions;

- (II) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;
- (III) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of groundwater for drinking water beneficial use under WAC [173-340-747](#)(4).

See subsection (3)(c)(iv)(B) of this section for methods that may be used to evaluate the soil to vapor pathway.

(c) **Modified Method B soil cleanup levels.**

- (i) **General.** Modified Method B soil cleanup levels are standard Method B soil cleanup levels, modified with chemical-specific or site-specific data. When making these modifications, the resultant cleanup levels shall meet applicable state and federal laws, meet health risk levels for standard Method B soil cleanup levels, and be demonstrated to be environmentally protective using the procedures specified in WAC [173-340-7490](#) through [173-340-7494](#). Changes to exposure assumptions must comply with WAC [173-340-708](#)(10).
- (ii) **Allowable modifications.** The following modifications can be made to the default assumptions in the standard Method B equations to derive modified Method B soil cleanup levels:
 - (A) For the protection of groundwater, see WAC [173-340-747](#);
 - (B) For soil ingestion, the gastrointestinal absorption fraction, may be modified if the requirements of WAC [173-340-702](#) (14), (15), (16), and [173-340-708](#)(10) are met;
 - (C) For dermal contact, the adherence factor, dermal absorption fraction and gastrointestinal absorption conversion factor may be modified if the requirements of WAC [173-340-702](#) (14), (15), (16), and [173-340-708](#)(10) are met;
 - (D) The toxicity equivalent factors provided in WAC [173-340-708](#)(8)(d), (e), and (f), may be modified if the requirements of WAC [173-340-708](#)(8)(g) and (h) are met;
 - (E) The reference dose and cancer potency factor may be modified if the requirements in WAC [173-340-708](#)(7) and (8) are met; and
 - (F) Other modifications incorporating new science as provided for in WAC [173-340-702](#)(14), (15) and (16).
- (iii) **Dermal contact.** For hazardous substances other than petroleum mixtures, dermal contact with the soil shall be evaluated whenever the proposed changes to Equations 740-1 or 740-2 would result in a significantly higher soil cleanup

level than would be calculated without the proposed changes. When conducting this evaluation, the following equations and default assumptions shall be used.

- (A) For noncarcinogens use Equation 740-4. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

Equation 740-4

$$C_{soil} = \frac{HQ \times ABW \times AT}{EF \times ED \left[\left(\frac{1}{RfDo} \times \frac{SIR \times AB1}{10^6 \text{ mg / kg}} \right) + \left(\frac{1}{RfDd} \times \frac{SA \times AF \times ABS}{10^6 \text{ mg / kg}} \right) \right]}$$

Where:		
C _{soil}	=	Soil cleanup level (mg/kg)
HQ	=	Hazard quotient (unitless)
ABW	=	Average body weight over the exposure duration (16 kg)
AT	=	Averaging time (6 years)
EF	=	Exposure frequency (1.0) (unitless)
ED	=	Exposure duration (6 years)
SIR	=	Soil ingestion rate (200 mg/day)
AB1	=	Gastrointestinal absorption fraction (1.0) (unitless)
SA	=	Dermal surface area (2,200 cm ²)
AF	=	Adherence factor (0.2 mg/cm ² -day)
ABS	=	Dermal absorption fraction (unitless). May use chemical-specific values or the following defaults: <ul style="list-style-type: none"> • 0.01 for inorganic hazardous substances • 0.0005 for volatile organic compounds with vapor pressure > = benzene • 0.03 for volatile organic compounds with vapor pressure < benzene • 0.1 for other organic hazardous substances
RfDo	=	Oral reference dose as defined in WAC 173-340-708(7) (mg/kg-day)
RfDd	=	Dermal reference dose (mg/kg-day) derived by RfDo x GI
GI	=	Gastrointestinal absorption conversion factor (unitless). May use chemical specific values or the following defaults: <ul style="list-style-type: none"> • 0.2 for inorganic hazardous substances • 0.8 for volatile organic compounds • 0.5 for other organic hazardous substances

- (B) For carcinogens use Equation 740-5. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

Equation 740-5

$$C_{soil} = \frac{RISK \times ABW \times AT}{EF \times ED \left[\left(\frac{SIR \times AB1 \times CPFo}{10^6 \text{ mg/kg}} \right) + \left(\frac{SA \times AF \times ABS \times CPFd}{10^6 \text{ mg/kg}} \right) \right]}$$

Where:		
C_{soil}	=	Soil cleanup level (mg/kg)
RISK	=	Acceptable cancer risk (1 in 1,000,000) (unitless)
ABW	=	Average body weight over the exposure duration (16 kg)
AT	=	Averaging time (75 years)
EF	=	Exposure frequency (1.0) (unitless)
ED	=	Exposure duration (6 years)
SIR	=	Soil ingestion rate (200 mg/day)
AB1	=	Gastrointestinal absorption fraction (1.0) (unitless). May use 0.6 for mixtures of dioxins and/or furans
CPFo	=	Oral cancer potency factor as defined in WAC 173-340-708(8) (kg-day/mg)
CPFd	=	Dermal cancer potency factor (kg-day/mg) derived by CPFo/GI
GI	=	Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults: <ul style="list-style-type: none"> • 0.2 for inorganic hazardous substances • 0.8 for volatile organic compounds and for mixtures of dioxins and/or furans • 0.5 for other organic hazardous substances
SA	=	Dermal surface area (2,200 cm ²)
AF	=	Adherence factor (0.2 mg/cm ² -day)
ABS	=	Dermal absorption fraction (unitless). May use chemical-specific values or the following defaults: <ul style="list-style-type: none"> • 0.01 for inorganic hazardous substances • 0.0005 for volatile organic compounds with vapor pressure > = benzene • 0.03 for volatile organic compounds with vapor pressure < benzene and for mixtures of dioxins and/or furans • 0.1 for other organic hazardous substances

(C) Modifications may be made to Equations 740-4 and 740-5 as provided for in subsection (3)(c)(ii) of this section.

(iv) **Soil vapors.**

(A) **Applicability.** The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:

(I) For other than petroleum hydrocarbon mixtures, the proposed changes to the standard Method B equations (Equations 740-1

and 740-2) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;

- (II) For petroleum hydrocarbon mixtures, the proposed changes to the standard Method B equations (Equations 740-3, 740-4 and 740-5) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;
- (III) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of groundwater for drinking water beneficial use under WAC [173-340-747\(6\)](#) using the default assumptions;
- (IV) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;
- (V) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of groundwater for drinking water beneficial use under WAC [173-340-747\(4\)](#).

(B) **Evaluation methods.** Soil cleanup levels that are protective of the indoor and ambient air shall be determined on a site-specific basis. Soil cleanup levels may be evaluated as being protective of air pathways using any of the following methods:

- (I) Measurements of the soil vapor concentrations, using methods approved by the department, demonstrating vapors in the soil would not exceed air cleanup levels established under WAC [173-340-750](#).
- (II) Measurements of ambient air concentrations and/or indoor air vapor concentrations throughout buildings, using methods approved by the department, demonstrating air does not exceed cleanup levels established under WAC [173-340-750](#). Such measurements must be representative of current and future site conditions when vapors are likely to enter and accumulate in structures. Measurement of ambient air may be excluded if it can be shown that indoor air is the most protective point of exposure.
- (III) Use of modeling methods approved by the department to demonstrate the air cleanup standards established under WAC [173-340-750](#) will not be exceeded. When this method is used, the department may require soil vapor and/or air

monitoring to be conducted to verify the calculations and compliance with air cleanup standards.

- (IV) Other methods as approved by the department demonstrating the air cleanup standards established under WAC [173-340-750](#) will not be exceeded.

- (d) **Using modified Method B to evaluate soil remediation levels.** In addition to the adjustments allowed under subsection (3)(c) of this section, adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC [173-340-355](#), [173-340-357](#), and [173-340-708](#)(3)(d) and (10)(b).
- (4) **Method C soil cleanup levels.** This section does not provide procedures for establishing Method C soil cleanup levels. Except for qualifying industrial properties, Method A and Method B, as described in this section, are the only methods available for establishing soil cleanup levels at sites. See WAC [173-340-745](#) for use of Method C soil cleanup levels at qualifying industrial properties. See also WAC [173-340-357](#) and [173-340-708](#)(3)(d) for how land use may be considered when selecting a cleanup action at a site.
- (5) **Adjustments to cleanup levels.**
- (a) **Total site risk adjustments.** Soil cleanup levels for individual hazardous substances developed in accordance with subsection (3) of this section, including cleanup levels based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one or the total excess cancer risk would exceed one in 100,000 (1×10^{-5}). These adjustments shall be made in accordance with the procedures specified in WAC [173-340-708](#)(5) and (6). In making these adjustments, the hazard index shall not exceed one and the total excess cancer risk shall not exceed one in 100,000 (1×10^{-5}).
- (b) **Adjustments to applicable state and federal laws.** Where a cleanup level developed under subsection (2) or (3) of this section is based on an applicable state or federal law and the level of risk upon which the standard is based exceeds an excess cancer risk of one in 100,000 (1×10^{-5}) or a hazard index of one, the cleanup level must be adjusted downward so that the total excess cancer risk does not exceed one in 100,000 (1×10^{-5}) and the hazard index does not exceed one at the site.
- (c) **Natural background and PQL considerations.** Cleanup levels determined under subsection (2) or (3) of this section, including cleanup levels adjusted under subsection (5)(a) and (b) of this section, shall not be set at levels below the practical quantitation limit or natural background, whichever is higher. See WAC [173-340-707](#) and [173-340-709](#) for additional requirements pertaining to practical quantitation limits and natural background.

(6) Point of compliance.

- (a)** The point of compliance is the point or points where the soil cleanup levels established under subsection (2) or (3) of this section shall be attained.
- (b)** For soil cleanup levels based on the protection of groundwater, the point of compliance shall be established in the soils throughout the site.
- (c)** For soil cleanup levels based on protection from vapors, the point of compliance shall be established in the soils throughout the site from the ground surface to the uppermost groundwater saturated zone (e.g., from the ground surface to the uppermost water table).
- (d)** For soil cleanup levels based on human exposure via direct contact or other exposure pathways where contact with the soil is required to complete the pathway, the point of compliance shall be established in the soils throughout the site from the ground surface to 15 feet below the ground surface. This represents a reasonable estimate of the depth of soil that could be excavated and distributed at the soil surface as a result of site development activities.
- (e)** For soil cleanup levels based on ecological considerations, see WAC [173-340-7490](#) for the point of compliance.
- (f)** The department recognizes that, for those cleanup actions selected under this chapter that involve containment of hazardous substances, the soil cleanup levels will typically not be met at the points of compliance specified in (b) through (e) of this subsection. In these cases, the cleanup action may be determined to comply with cleanup standards, provided:
 - (i)** The selected remedy is permanent to the maximum extent practicable using the procedures in WAC [173-340-360](#);
 - (ii)** The cleanup action is protective of human health. The department may require a site-specific human health risk assessment conforming to the requirements of this chapter to demonstrate that the cleanup action is protective of human health;
 - (iii)** The cleanup action is demonstrated to be protective of terrestrial ecological receptors under WAC [173-340-7490](#) through [173-340-7494](#);
 - (iv)** Institutional controls are put in place under WAC [173-340-440](#) that prohibit or limit activities that could interfere with the long-term integrity of the containment system;
 - (v)** Compliance monitoring under WAC [173-340-410](#) and periodic reviews under WAC [173-340-430](#) are designed to ensure the long-term integrity of the containment system; and

- (vi) The types, levels and amount of hazardous substances remaining on-site and the measures that will be used to prevent migration and contact with those substances are specified in the draft cleanup action plan.

(7) Compliance monitoring.

- (a) Compliance with soil cleanup levels shall be based on total analyses of the soil fraction less than two millimeters in size. When it is reasonable to expect that larger soil particles could be reduced to two millimeters or less during current or future site use and this reduction could cause an increase in the concentrations of hazardous substances in the soil, soil cleanup levels shall also apply to these larger soil particles. Compliance with soil cleanup levels shall be based on dry weight concentrations. The department may approve the use of alternate procedures for stabilized soils.
- (b) When soil levels have been established at a site, sampling of the soil shall be conducted to determine if compliance with the soil cleanup levels has been achieved. Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC [173-340-410](#). The sample design shall provide data that are representative of the area where exposure to hazardous substances may occur.
- (c) The data analysis and evaluation procedures used to evaluate compliance with soil cleanup levels shall be defined in a compliance monitoring plan prepared under WAC [173-340-410](#). These procedures shall meet the following general requirements:
 - (i) Methods of data analysis shall be consistent with the sampling design. Separate methods may be specified for surface soils and deeper soils;
 - (ii) When cleanup levels are based on requirements specified in applicable state and federal laws, the procedures for evaluating compliance that are specified in those requirements shall be used to evaluate compliance with cleanup levels unless those procedures conflict with the intent of this section;
 - (iii) Where procedures for evaluating compliance are not specified in an applicable state and federal law, statistical methods shall be appropriate for the distribution of sampling data for each hazardous substance. If the distributions for hazardous substances differ, more than one statistical method may be required; and
 - (iv) The data analysis plan shall specify which parameters are to be used to determine compliance with soil cleanup levels.
 - (A) For cleanup levels based on short-term or acute toxic effects on human health or the environment, an upper percentile soil concentration shall be used to evaluate compliance with cleanup levels.
 - (B) For cleanup levels based on chronic or carcinogenic threats, the true mean soil concentration shall be used to evaluate compliance with cleanup levels.

- (d)** When data analysis procedures for evaluating compliance are not specified in an applicable state or federal law the following procedures shall be used:

 - (i)** A confidence interval approach that meets the following requirements:

 - (A)** The upper one sided 95 percent confidence limit on the true mean soil concentration shall be less than the soil cleanup level. For lognormally distributed data, the upper one-sided 95 percent confidence limit shall be calculated using Land's method; and
 - (B)** Data shall be assumed to be lognormally distributed unless this assumption is rejected by a statistical test. If a lognormal distribution is inappropriate, data shall be assumed to be normally distributed unless this assumption is rejected by a statistical test. The W test, D'Agostino's test, or, censored probability plots, as appropriate for the data, shall be the statistical methods used to determine whether the data are lognormally or normally distributed;
 - (ii)** For an evaluation conducted under (c)(iv)(A) of this subsection, a parametric test for percentiles based on tolerance intervals to test the proportion of soil samples having concentrations less than the soil cleanup level. When using this method, the true proportion of samples that do not exceed the soil cleanup level shall not be less than 90 percent. Statistical tests shall be performed with a Type I error level of 0.05;
 - (iii)** Direct comparison of soil sample concentrations with cleanup levels may be used to evaluate compliance with cleanup levels where selective sampling of soil can be reliably expected to find suspected soil contamination. There must be documented, reliable information that the soil samples have been taken from the appropriate locations. Persons using this method must demonstrate that the basis used for selecting the soil sample locations provides a high probability that any existing areas of soil contamination have been found; or
 - (iv)** Other statistical methods approved by the department.
- (e)** All data analysis methods used, including those specified in state and federal law, must meet the following requirements:

 - (i)** No single sample concentration shall be greater than two times the soil cleanup level. Higher exceedances to control false positive error rates at five percent may be approved by the department when the cleanup level is based on background concentrations; and
 - (ii)** Less than 10 percent of the sample concentrations shall exceed the soil cleanup level. Higher exceedances to control false positive error rates at five percent may be approved by the department when the cleanup level is based on background concentrations.

- (f)** When using statistical methods to demonstrate compliance with soil cleanup levels, the following procedures shall be used for measurements below the practical quantitation limit:
- (i)** Measurements below the method detection limit shall be assigned a value equal to one-half the method detection limit when not more than 15 percent of the measurements are below the practical quantitation limit.
 - (ii)** Measurements above the method detection limit but below the practical quantitation limit shall be assigned a value equal to the method detection limit when not more than 15 percent of the measurements are below the practical quantitation limit.
 - (iii)** When between 15 and 50 percent of the measurements are below the practical quantitation limit and the data are assumed to be lognormally or normally distributed, Cohen's method shall be used to calculate a corrected mean and standard deviation for use in calculating an upper confidence limit on the true mean soil concentration.
 - (iv)** If more than 50 percent of the measurements are below the practical quantitation limit, the largest value in the data set shall be used in place of an upper confidence limit on the true mean soil concentration.
 - (v)** The department may approve alternate statistical procedures for handling nondetected values or values below the practical quantitation limit.
 - (vi)** If a hazardous substance or petroleum fraction has never been detected in any sample at a site and these substances are not suspected of being present at the site based on site history and other knowledge, that hazardous substance or petroleum fraction may be excluded from the statistical analysis.

WAC 173-340-745 Soil cleanup standards for industrial properties.**(1) Applicability.**

(a) Criteria. This section shall be used to establish soil cleanup levels where the department has determined that industrial land use represents the reasonable maximum exposure. Soil cleanup levels for this presumed exposure scenario shall be established in accordance with this section. To qualify as an industrial land use and to use an industrial soil cleanup level a site must meet the following criteria:

(i) The area of the site where industrial property soil cleanup levels are proposed must meet the definition of an industrial property under WAC [173-340-200](#);

Industrial soil cleanup levels are based on an adult worker exposure scenario. It is essential to evaluate land uses and zoning for compliance with this definition in the context of this exposure scenario. Local governments use a variety of zoning categories for industrial land uses so a property does not necessarily have to be in a zone called "industrial" to meet the definition of "industrial property." Also, there are land uses allowed in industrial zones that are actually commercial or residential, rather than industrial, land uses. Thus, an evaluation to determine compliance with this definition should include a review of the actual text in the comprehensive plan and zoning ordinance pertaining to the site and a visit to the site to observe land uses in the zone. When evaluating land uses to determine if a property use not specifically listed in the definition is a "traditional industrial use" or to determine if the property is "zoned for industrial use," the following characteristics shall be considered:

- (A)** People do not normally live on industrial property. The primary potential exposure is to adult employees of businesses located on the industrial property;
- (B)** Access to industrial property by the general public is generally not allowed. If access is allowed, it is highly limited and controlled due to safety or security considerations;
- (C)** Food is not normally grown/raised on industrial property. (However, food processing operations are commonly considered industrial facilities);
- (D)** Operations at industrial properties are often (but not always) characterized by use and storage of chemicals, noise, odors and truck traffic;
- (E)** The surface of the land at industrial properties is often (but not always) mostly covered by buildings or other structures, paved parking lots, paved access roads and material storage areas—minimizing potential exposure to the soil; and

- (F) Industrial properties may have support facilities consisting of offices, restaurants, and other facilities that are commercial in nature but are primarily devoted to administrative functions necessary for the industrial use and/or are primarily intended to serve the industrial facility employees and not the general public.
- (ii) The cleanup action provides for appropriate institutional controls implemented in accordance with WAC [173-340-440](#) to limit potential exposure to residual hazardous substances. This shall include, at a minimum, placement of a covenant on the property restricting use of the area of the site where industrial soil cleanup levels are proposed to industrial property uses; and
- (iii) Hazardous substances remaining at the property after remedial action would not pose a threat to human health or the environment at the site or in adjacent nonindustrial areas. In evaluating compliance with this criterion, at a minimum the following factors shall be considered:
 - (A) The potential for access to the industrial property by the general public, especially children. The proximity of the industrial property to residential areas, schools or childcare facilities shall be considered when evaluating access. In addition, the presence of natural features, manmade structures, arterial streets or intervening land uses that would limit or encourage access to the industrial property shall be considered. Fencing shall not be considered sufficient to limit access to an industrial property since this is insufficient to assure long term protection;
 - (B) The degree of reduction of potential exposure to residual hazardous substances by the selected remedy. Where the residual hazardous substances are to be capped to reduce exposure, consideration shall be given to the thickness of the cap and the likelihood of future site maintenance activities, utility and drainage work, or building construction reexposing residual hazardous substances;
 - (C) The potential for transport of residual hazardous substances to off-property areas, especially residential areas, schools and childcare facilities;
 - (D) The potential for significant adverse effects on wildlife caused by residual hazardous substances using the procedures in WAC [173-340-7490](#) through [173-340-7494](#); and
 - (E) The likelihood that these factors would not change for the foreseeable future.
- (b) **Expectations.** In applying the criteria in (a) of this subsection, the department expects the following results:

- (i) The department expects that properties zoned for heavy industrial or high intensity industrial use and located within a city or county that has completed a comprehensive plan and adopted implementing zoning regulations under the Growth Management Act (chapter [36.70A](#) RCW) will meet the definition of industrial property. For cities and counties not planning under the Growth Management Act, the department expects that spot zoned industrial properties will not meet the definition of industrial property but that properties that are part of a larger area zoned for heavy industrial or high intensity industrial use will meet the definition of an industrial property;
- (ii) For both GMA and non-GMA cities and counties, the department expects that light industrial and commercial zones and uses should meet the definition of industrial property where the land uses are comparable to those cited in the definition of industrial property or the land uses are an integral part of a qualifying industrial use (such as, ancillary or support facilities). This will require a site-by-site evaluation of the zoning text and land uses;
- (iii) The department expects that for portions of industrial properties in close proximity to (generally, within a few hundred feet) residential areas, schools or childcare facilities, residential soil cleanup levels will be used unless:
 - (A) Access to the industrial property is very unlikely or, the hazardous substances that are not treated or removed are contained under a cap of clean soil (or other materials) of substantial thickness so that it is very unlikely the hazardous substances would be disturbed by future site maintenance and construction activities (depths of even shallow footings, utilities and drainage structures in industrial areas are typically three to six feet); and
 - (B) The hazardous substances are relatively immobile (or have other characteristics) or have been otherwise contained so that subsurface lateral migration or surficial transport via dust or runoff to these nearby areas or facilities is highly unlikely; and
- (iv) Note that a change in the reasonable maximum exposure to industrial site use primarily affects the direct contact exposure pathway. Thus, for example, for sites where the soil cleanup level is based primarily on the potential for the hazardous substance to leach and cause groundwater contamination, it is the department's expectation that an industrial land use will not affect the soil cleanup level. Similarly, where the soil cleanup level is based primarily on surface water protection or other pathways other than direct human contact, land use is not expected to affect the soil cleanup level.

(2) General considerations.

- (a) In the event of a release of a hazardous substance at a site qualifying as industrial property, a cleanup action that complies with this chapter shall be conducted to address

those soils with hazardous substance concentrations which exceed industrial soil cleanup levels at the relevant point of compliance.

- (b) Soil cleanup levels for areas beyond the industrial property boundary that do not qualify for industrial soil cleanup levels under this section (including implementation of institutional controls and a covenant restricting use of the property to industrial property uses) shall be established in accordance with WAC [173-340-740](#).
- (c) Industrial soil cleanup levels shall be established at concentrations that do not directly or indirectly cause violations of groundwater, surface water, sediment or air cleanup standards established under this chapter or under applicable state and federal laws. A property that qualifies for an industrial soil cleanup level under this section does not necessarily qualify for a Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium.
- (d) The department may require more stringent soil cleanup standards than required by this section when, based on a site-specific evaluation, the department determines that this is necessary to protect human health and the environment, including consideration of the factors in WAC [173-340-740](#) (1)(c). Any imposition of more stringent requirements under this provision shall comply with WAC [173-340-702](#) and [173-340-708](#).

(3) Method A industrial soil cleanup levels.

- (a) **Applicability.** Method A industrial soil cleanup levels may be used only at any industrial property qualifying under WAC [173-340-704](#)(1).
- (b) **General requirements.** Method A industrial soil cleanup levels shall be at least as stringent as all of the following:
 - (i) Concentrations in Table 745-1 and compliance with the corresponding footnotes;
 - (ii) Concentrations established under applicable state and federal laws;
 - (iii) Concentrations that result in no significant adverse effects on the protection and propagation of terrestrial ecological receptors using the procedures specified in WAC [173-340-7490](#) through [173-340-7494](#), unless it is demonstrated under those sections that establishing a soil concentration is unnecessary; and
 - (iv) For a hazardous substance that is deemed an indicator hazardous substance under WAC [173-340-708](#)(2) and for which there is no value in Table 745-1 or applicable state and federal laws, a concentration that does not exceed the natural background concentration or the practical quantification limit, subject to the limitations in this chapter.

(4) Method B industrial soil cleanup levels.

This section does not provide procedures for establishing Method B industrial soil cleanup levels. Method C is the standard method for establishing soil cleanup levels at industrial sites and its use is conditioned upon the continued use of the site for industrial purposes. The person conducting the cleanup action also has the option of establishing unrestricted land use soil cleanup levels under WAC [173-340-740](#) for qualifying industrial properties. This option may be desirable when the person wants to avoid restrictions on the future use of the property. When a site does not qualify for a Method A or Method C industrial soil cleanup level under this section, or the user chooses to establish unrestricted land use soil cleanup levels at a site, soil cleanup levels must be established using Methods A or B under WAC [173-340-740](#).

(5) Method C industrial soil cleanup levels.

- (a) Applicability.** Method C industrial soil cleanup levels consist of standard and modified cleanup levels as described in this subsection. Either standard or modified Method C soil cleanup levels may be used at any industrial property qualifying under subsection (1) of this section.
- (b) Standard Method C industrial soil cleanup levels.** Standard Method C industrial soil cleanup levels for industrial properties shall be at least as stringent as all of the following:
 - (i) Applicable state and federal laws.** Concentrations established under applicable state and federal laws;
 - (ii) Environmental protection.** Concentrations that result in no significant adverse effects on the protection and propagation of wildlife established using the procedures specified in WAC [173-340-7490](#) through [173-340-7494](#), unless it is demonstrated under those sections that establishing a soil concentration is unnecessary.
 - (iii) Human health protection.** For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations that protect human health as determined by evaluating the following exposure pathways:
 - (A) Groundwater protection.** Concentrations that will not cause contamination of groundwater to concentrations which exceed groundwater cleanup levels established under WAC [173-340-720](#) as determined using the methods described in WAC [173-340-747](#).
 - (B) Soil direct contact.** Concentrations that, due to direct contact with contaminated soil, are estimated to result in no acute or chronic noncarcinogenic toxic effects on human health using a hazardous quotient of one and concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in 100,000

(1×10^{-5}) . Equations 745-1 and 745-2 and the associated default assumptions shall be used to conduct this calculation.

- (I) **Noncarcinogens.** For noncarcinogenic toxic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 745-1. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

Equation 745-1

Soil cleanup level = (mg/kg)	RfD x ABW x UCF x HQ x AT	
	SIR x AB1 x EF x ED	
Where:		
RfD	=	Reference dose as specified in WAC 173-340-708 (7) (mg/kg-day)
ABW	=	Average body weight over the exposure duration (70 kg)
UCF	=	Unit conversion factor (1,000,000 mg/kg)
SIR	=	Soil ingestion rate (50 mg/day)
AB1	=	Gastrointestinal absorption fraction (1.0) (unitless)
EF	=	Exposure frequency (0.4) (unitless)
HQ	=	Hazard quotient (1) (unitless)
AT	=	Averaging time (20 years)
ED	=	Exposure duration (20 years)

- (II) **Carcinogens.** For carcinogenic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 745-2. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

Equation 745-2

Soil cleanup level = (mg/kg)	RISK x ABW x AT x UCF	
	CPF x SIR x AB1 x ED x EF	
Where:		
RISK	=	Acceptable cancer risk level (1 in 100,000) (unitless)
ABW	=	Average body weight over the exposure duration (70 kg)
AT	=	Averaging time (75 years)
UCF	=	Unit conversion factor (1,000,000 mg/kg)
CPF	=	Carcinogenic Potency Factor as specified in WAC 173-340-708 (8) (kg-day/mg)
SIR	=	Soil ingestion rate (50 mg/day)
AB1	=	Gastrointestinal absorption fraction (1.0) (unitless). May use 0.6 for mixtures of dioxins and/or furans
ED	=	Exposure duration (20 years)
EF	=	Exposure frequency (0.4) (unitless)

- (III) **Petroleum mixtures.** For noncarcinogenic effects of petroleum mixtures, a total petroleum hydrocarbon cleanup level shall be calculated taking into account the additive effects of the petroleum fractions and volatile organic compounds present in the petroleum mixture. Equation 745-3 shall be used for this calculation. This equation takes into account concurrent exposure due to ingestion and dermal contact with petroleum contaminated soils. Cleanup levels for other noncarcinogens and known or suspected carcinogens within the petroleum mixture shall be calculated using Equations 745-4 and 745-5. See Table 830-1 for the analyses required for various petroleum products to use this method.

Equation 745-3

$$C_{\text{soil}} = \frac{HI \times ABW \times AT}{EF \times ED \left[\left(\frac{SIR \times AB1}{10^6 \text{ mg/kg}} \sum_{i=1}^n \frac{F(i)}{RfDo(i)} \right) + \left(\frac{SA \times AF}{10^6 \text{ mg/kg}} \sum_{i=1}^n \frac{F(i) \times ABS(i)}{RfDd(i)} \right) \right]}$$

Where:		
C_{soil}	=	TPH soil cleanup level (mg/kg)
HI	=	Hazard index (1) (unitless)
ABW	=	Average body weight over the exposure duration (70 kg)
AT	=	Averaging time (20 years)
EF	=	Exposure frequency (0.7) (unitless)
ED	=	Exposure duration (20 years)
SIR	=	Soil ingestion rate (50 mg/day)
AB1	=	Gastrointestinal absorption fraction (1.0) (unitless)
F(i)	=	Fraction (by weight) of petroleum component (i) (unitless)
SA	=	Dermal surface area (2,500 cm ²)
AF	=	Adherence factor (0.2 mg/cm ² -day)
ABS	=	Dermal absorption fraction for petroleum component (i) (unitless). May use chemical-specific values or the following defaults: <ul style="list-style-type: none"> • 0.0005 for volatile petroleum components with vapor pressure >= benzene • 0.03 for volatile petroleum components with vapor pressure < benzene • 0.1 for other petroleum components
RfDo(i)	=	Oral reference dose of petroleum component (i) as defined in WAC 173-340-708 (7) (mg/kg-day)
RfDd(i)	=	Dermal reference dose for petroleum component (i) (mg/kg-day) derived by RfDo x GI
GI	=	Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults: <ul style="list-style-type: none"> • 0.8 for volatile petroleum components • 0.5 for other petroleum components
n	=	The number of petroleum components (petroleum fractions plus volatile organic compounds with an RfD) present in the petroleum mixture. (See Table 830-1.)

- (C) **Soil vapors.** The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:
- (I) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of groundwater for drinking water beneficial use under WAC [173-340-747](#)(6) using the default assumptions;

- (II) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;
- (III) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of groundwater for drinking water beneficial use under WAC [173-340-747](#)(4).

See subsection (5)(c)(iv)(B) of this section for methods that may be used to evaluate the soil to vapor pathway.

(c) **Modified Method C soil cleanup levels.**

- (i) **General.** Modified Method C soil cleanup levels are standard Method C soil cleanup levels modified with chemical-specific or site-specific data. When making these adjustments, the resultant cleanup levels shall meet applicable state and federal laws, meet health risk levels for standard Method C soil cleanup levels, and be demonstrated to be environmentally protective using the procedures specified in WAC [173-340-7490](#) through [173-340-7494](#). Changes to exposure assumptions must comply with WAC [173-340-708](#)(10).
- (ii) **Allowable modifications.** The following modifications may be made to the default assumptions in the standard Method C equations to derive modified Method C soil cleanup levels:
 - (A) For the protection of groundwater see WAC [173-340-747](#);
 - (B) For soil ingestion, the gastrointestinal absorption fraction may be modified if the requirements of WAC [173-340-702](#)(14), (15), (16), and [173-340-708](#)(10) are met;
 - (C) For dermal contact, the adherence factor, dermal absorption fraction and gastrointestinal absorption conversion factor may be modified if the requirements of WAC [173-340-702](#)(14), (15), (16), and [173-340-708](#)(10) are met;
 - (C) The toxicity equivalent factors provided in WAC [173-340-708](#)(8)(d), (e) and (f), may be modified provided the requirements of WAC [173-340-708](#)(8)(g) and (h) are met;
 - (E) The reference dose and cancer potency factor may be modified if the requirements in WAC [173-340-708](#)(7) and (8) are met; and
 - (F) Modifications incorporating new science as provided for in WAC [173-340-702](#)(14), (15) and (16).
- (iii) **Dermal contact.** For hazardous substances other than petroleum mixtures, dermal contact with the soil shall be evaluated whenever the proposed changes to Equations 745-1 and 745-2 would result in a significantly higher soil cleanup

level than would be calculated without the proposed changes. When conducting this evaluation, the following equations and default assumptions shall be used:

- (A) For noncarcinogens use Equation 745-4. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

Equation 745-4

$$C_{soil} = \frac{HQ \times ABW \times AT}{EF \times ED \left[\left(\frac{1}{RfDo} \times \frac{SIR \times AB1}{10^6 \text{ mg/kg}} \right) + \left(\frac{1}{RfDd} \times \frac{SA \times AF \times ABS}{10^6 \text{ mg/kg}} \right) \right]}$$

Where:		
C _{soil}	=	Soil cleanup level (mg/kg)
HQ	=	Hazard quotient (unitless)
ABW	=	Average body weight over the exposure duration (70 kg)
AT	=	Averaging time (20 years)
EF	=	Exposure frequency (0.7) (unitless)
ED	=	Exposure duration (20 years)
SIR	=	Soil ingestion rate (50 mg/day)
AB1	=	Gastrointestinal absorption fraction (1.0) (unitless)
SA	=	Dermal surface area (2,500 cm ²)
AF	=	Adherence factor (0.2 mg/cm ² -day)
ABS	=	Dermal absorption fraction (unitless). May use chemical-specific values or the following defaults: <ul style="list-style-type: none"> • 0.01 for inorganic hazardous substances • 0.0005 for volatile organic compounds with vapor pressure > = benzene • 0.03 for volatile organic compounds with vapor pressure < benzene • 0.1 for other organic hazardous substances
RfDo	=	Oral reference dose as defined in WAC 173-340-708(7) (mg/kg-day)
RfDd	=	Dermal reference dose (mg/kg-day) derived by RfDo x GI
GI	=	Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults: <ul style="list-style-type: none"> • 0.2 for inorganic hazardous substances • 0.8 for volatile organic compounds • 0.5 for other organic hazardous substances

- (B) For carcinogens use Equation 745-5. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

Equation 745-5

$$C_{soil} = \frac{RISK \times ABW \times AT}{EF \times ED \left[\left(\frac{SIR \times AB1 \times CPFo}{10^6 \text{ mg / kg}} \right) + \left(\frac{SA \times AF \times ABS \times CPFd}{10^6 \text{ mg / kg}} \right) \right]}$$

Where:		
C_{soil}	=	Soil cleanup level (mg/kg)
RISK	=	Acceptable cancer risk (1 in 100,000) (unitless)
ABW	=	Average body weight over the exposure duration (70 kg)
AT	=	Averaging time (75 years)
EF	=	Exposure frequency (0.7) (unitless)
ED	=	Exposure duration (20 years)
SIR	=	Soil ingestion rate (50 mg/day)
AB1	=	Gastrointestinal absorption fraction (1.0) (unitless). May use 0.6 for mixtures of dioxins and/or furans
CPFo	=	Oral cancer potency factor as defined in WAC 173-340-708 (8) (kg-day/mg)
CPFd	=	Dermal cancer potency factor (kg-day/mg) derived by CPFo/GI
GI	=	Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults: <ul style="list-style-type: none"> • 0.2 for inorganic hazardous substances • 0.8 for volatile organic compounds and mixtures of dioxins and/or furans • 0.5 for other organic hazardous substances
SA	=	Dermal surface area (2,500 cm ²)
AF	=	Adherence factor (0.2 mg/cm ² -day)
ABS	=	Dermal absorption fraction (unitless). May use chemical-specific values or the following defaults: <ul style="list-style-type: none"> • 0.01 for inorganic hazardous substances • 0.0005 for volatile organic compounds with vapor pressure > = benzene • 0.03 for volatile organic compounds with vapor pressure < benzene and for mixtures of dioxins and/or furans • 0.1 for other organic hazardous substances

- (C) Modifications may be made to Equations 745-4 and 745-5 as provided for in subsection (5)(c)(ii) of this section.

(iv) **Soil vapors.**

- (A) **Applicability.** The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:
- (I) For other than petroleum hydrocarbon mixtures, the proposed changes to the standard Method C equations (Equations 745-1

and 745-2) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;

- (II) For petroleum hydrocarbon mixtures, the proposed changes to the standard Method C equations (Equations 745-3, 745-4 and 745-5) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;
- (III) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of groundwater for drinking water beneficial use under WAC [173-340-747\(6\)](#) using the default assumptions;
- (IV) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;
- (V) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of groundwater for drinking water beneficial use under WAC [173-340-747\(4\)](#).

(B) **Evaluation methods.** Soil cleanup levels that are protective of the indoor and ambient air shall be determined on a site-specific basis. Soil cleanup levels may be evaluated as being protective of air pathways using any of the following methods:

- (I) Measurements of the soil vapor concentrations, using methods approved by the department, demonstrating vapors in the soil would not exceed air cleanup levels established under WAC [173-340-750](#).
- (II) Measurements of ambient air concentrations and/or indoor air vapor concentrations throughout buildings, using methods approved by the department, demonstrating air does not exceed cleanup levels established under WAC [173-340-750](#). Such measurements must be representative of current and future site conditions when vapors are likely to enter and accumulate in structures. Measurement of ambient air may be excluded if it can be shown that indoor air is the most protective point of exposure.
- (III) Use of modeling methods approved by the department to demonstrate the air cleanup standards established under WAC [173-340-750](#) will not be exceeded. When this method is used, the department may require soil vapor and/or air

monitoring to be conducted to verify the calculations and compliance with air cleanup standards.

- (IV) Other methods as approved by the department demonstrating the air cleanup standards established under WAC [173-340-750](#) will not be exceeded.

- (d) **Using modified Method C to evaluate industrial soil remediation levels.** In addition to the adjustments allowed under subsection (5)(c) of this section, other adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC [173-340-355](#), [173-340-357](#), and [173-340-708](#)(3)(d) and (10)(b).

(6) **Adjustments to industrial soil cleanup levels.**

- (a) **Total site risk adjustments.** Soil cleanup levels for individual hazardous substances developed in accordance with subsection (5) of this section, including cleanup levels based on state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one or the total excess cancer risk would exceed one in 100,000 (1×10^{-5}). These adjustments shall be made in accordance with the procedures specified in WAC [173-340-708](#)(5) and (6). In making these adjustments, the hazard index shall not exceed one and the total excess cancer risk shall not exceed one in 100,000 (1×10^{-5}).
- (b) **Adjustments to applicable state and federal laws.** Where a cleanup level developed under subsection (3) or (5) of this section is based on an applicable state or federal law and the level of risk upon which the standard is based exceeds an excess cancer risk of one in 100,000 (1×10^{-5}) or a hazard index of one, the cleanup level shall be adjusted downward so that total excess cancer risk does not exceed one in 100,000 (1×10^{-5}) and the hazard index does not exceed one at the site.
- (c) **Natural background and analytical considerations.** Cleanup levels determined under subsection (3) or (5) of this section, including cleanup levels adjusted under subsection (6)(a) and (b) of this section, shall not be set at levels below the practical quantitation limit or natural background concentration, whichever is higher. See WAC [173-340-707](#) and [173-340-709](#) for additional requirements pertaining to practical quantitation limits and natural background.
- (7) **Point of compliance.** The point of compliance for industrial property soil cleanup levels shall be established in accordance with WAC [173-340-740](#)(6).
- (8) **Compliance monitoring.** Compliance monitoring and data analysis and evaluation for industrial property soil cleanup levels shall be performed in accordance with WAC [173-340-410](#) and [173-340-740](#)(7).

WAC 173-340-747 Deriving soil concentrations for groundwater protection.

- (1) **Purpose.** The purpose of this section is to establish soil concentrations that will not cause contamination of groundwater at levels that exceed the groundwater cleanup levels established under WAC [173-340-720](#). Soil concentrations established under this section are used to establish either Method B soil cleanup levels (see WAC [173-340-740](#)(3)(b)(iii)(A)) or Method C soil cleanup levels (see WAC [173-340-745](#)(5)(b)(iii)(A)).

For the purposes of this section, "soil concentration" means the concentration in the soil that will not cause an exceedance of the groundwater cleanup level established under WAC [173-340-720](#).

- (2) **General requirements.** The soil concentration established under this section for each hazardous substance shall meet the following two criteria:

- (a) The soil concentration shall not cause an exceedance of the groundwater cleanup level established under WAC [173-340-720](#). To determine if this criterion is met, one of the methodologies specified in subsections (4) through (9) of this section shall be used; and
- (b) To ensure that the criterion in (a) of this subsection is met, the soil concentration shall not result in the accumulation of nonaqueous phase liquid on or in groundwater. To determine if this criterion is met, one of the methodologies specified in subsection (10) of this section shall be used.

- (3) **Overview of methods.** This subsection provides an overview of the methods specified in subsections (4) through (10) of this section for deriving soil concentrations that meet the criteria specified in subsection (2) of this section. Certain methods are tailored for particular types of hazardous substances or sites. Certain methods are more complex than others and certain methods require the use of site-specific data. The specific requirements for deriving a soil concentration under a particular method may also depend on the hazardous substance.

- (a) **Fixed parameter three-phase partitioning model.** The three-phase partitioning model with fixed input parameters may be used to establish a soil concentration for any hazardous substance. Site-specific data are not required for use of this model. See subsection (4) of this section.
- (b) **Variable parameter three-phase partitioning model.** The three-phase partitioning model with variable input parameters may be used to establish a soil concentration for any hazardous substance. Site-specific data are required for use of this model. See subsection (5) of this section.
- (c) **Four-phase partitioning model.** The four-phase partitioning model may be used to derive soil concentrations for any site where hazardous substances are present in the soil as a nonaqueous phase liquid (NAPL). The department expects that this model will be used at sites contaminated with petroleum hydrocarbons. Site-specific data are required for use of this model. See subsection (6) of this section.
- (d) **Leaching tests.** Leaching tests may be used to establish soil concentrations for certain metals. Leaching tests may also be used to establish soil concentrations for other

hazardous substances, including petroleum hydrocarbons, provided sufficient information is available to demonstrate that the leaching test can accurately predict groundwater impacts. Testing of soil samples from the site is required for use of this method. See subsection (7) of this section.

- (e) **Alternative fate and transport models.** Fate and transport models other than those specified in subsections (4) through (6) of this section may be used to establish a soil concentration for any hazardous substance. Site-specific data are required for use of such models. See subsection (8) of this section.
 - (f) **Empirical demonstration.** An empirical demonstration may be used to show that measured soil concentrations will not cause an exceedance of the applicable groundwater cleanup levels established under WAC [173-340-720](#). This empirical demonstration may be used for any hazardous substance. Site-specific data (e.g., groundwater samples and soil samples) are required under this method. If the required demonstrations cannot be made, then a protective soil concentration shall be established under one of the methods specified in subsections (4) through (8) of this section. See subsection (9) of this section.
 - (g) **Residual saturation.** To ensure that the soil concentration established under one of the methods specified in subsections (4) through (9) of this section will not cause an exceedance of the groundwater cleanup level established under WAC [173-340-720](#), the soil concentration must not result in the accumulation of nonaqueous phase liquid (NAPL) on or in groundwater. The methodologies and procedures specified in subsection (10) of this section shall be used to determine if this criterion is met.
- (4) **Fixed parameter three-phase partitioning model.**
- (a) **Overview.** This subsection specifies the procedures and requirements for establishing soil concentrations through the use of the fixed parameter three-phase partitioning model. The model may be used to establish soil concentrations for any hazardous substance. The model may be used to calculate both unsaturated and saturated zone soil concentrations.

This method provides default or fixed input parameters for the three-phase partitioning model that are intended to be protective under most circumstances and conditions; site-specific measurements are not required. In some cases it may be appropriate to use site-specific measurements for the input parameters. Subsection (5) of this section specifies the procedures and requirements to establish site-specific input parameters for use in the three-phase partitioning model.
 - (b) **Description of the model.** The three-phase partitioning model is described by the following equation:

Equation 747-1

$$C_s = C_w (UCF) DF \left[K_d + \frac{(\theta_w + \theta_a H_{cc})}{\rho_b} \right]$$

Where:		
C_s	=	Soil concentration (mg/kg)
C_w	=	Groundwater cleanup level established under WAC 173-340-720 (ug/l)
UCF	=	Unit conversion factor (1mg/1,000 ug)
DF	=	Dilution factor (dimensionless: 20 for unsaturated zone soil; see (e) of this subsection for saturated zone soil)
K_d	=	Distribution coefficient (L/kg; see (c) of this subsection)
θ_w	=	Water-filled soil porosity (ml water/ml soil: 0.3 for unsaturated zone soil; see (e) of this subsection for saturated zone soil)
θ_a	=	Air-filled soil porosity (ml air/ml soil: 0.13 for unsaturated zone soil; see (e) of this subsection for saturated zone soil)
H_{cc}	=	Henry's law constant (dimensionless; see (d) of this subsection)
ρ_b	=	Dry soil bulk density (1.5 kg/L)

(c) **Distribution coefficient (K_d).** The default K_d values for organics and metals used in Equation 747-1 are as follows:

(i) **Organics.** For organic hazardous substances, the K_d value shall be derived using Equation 747-2. The K_{oc} (soil organic carbon-water partition coefficient) parameter specified in Equation 747-2 shall be derived as follows:

(A) **Nonionic organics.** For individual nonionic hydrophobic organic hazardous substances (e.g., benzene and naphthalene), the K_{oc} values in Table 747-1 shall be used. For hazardous substances not listed in Table 747-1, K_d values may be developed as provided in subsection (5) of this section (variable three-phase partitioning model).

(B) **Ionizing organics.** For ionizing organic hazardous substances (e.g., pentachlorophenol and benzoic acid), the K_{oc} values in Table 747-2 shall be used. Table 747-2 provides K_{oc} values for three different pHs. To select the appropriate K_{oc} value, the soil pH must be measured. The K_{oc} value for the corresponding soil pH shall be used. If the soil pH falls between the pH values provided, an appropriate K_{oc} value shall be selected by interpolation between the listed K_{oc} values.

Equation 747-2

$K_d = K_{oc} \times f_{oc}$		
Where:		
K_d	=	Distribution coefficient (L/kg)
K_{oc}	=	Soil organic carbon-water partitioning coefficient (L/kg). See (c)(i) of this subsection.
f_{oc}	=	Soil fraction of organic carbon (0.1% or 0.001 g/g)

(ii) **Metals.** For metals, the K_d values in Table 747-3 shall be used. For metals not listed in Table 747-3, K_d values may be developed as provided in subsection (5) of this section (variable three-phase partitioning model).

(d) **Henry's law constant.** For petroleum fractions, the values for Henry's law constant in Table 747-4 shall be used in Equation 747-1. For individual organic hazardous substances, the value shall be based on values in the scientific literature. For all metals present as inorganic compounds except mercury, zero shall be used. For mercury, either 0.47 or a value derived from the scientific literature shall be used. Derivation of Henry's law constant from the scientific literature shall comply with WAC [173-340-702](#)(14), (15) and (16).

(e) **Saturated zone soil concentrations.** Equation 747-1 may also be used to derive concentrations for soil that is located at or below the groundwater table (the saturated zone). The following input parameters shall be changed if Equation 747-1 is used to derive saturated zone soil concentrations:

- (i) The dilution factor shall be changed from 20 to 1;
- (ii) The water-filled soil porosity value shall be changed from 0.3 ml water/ml soil to 0.43 ml water/ml soil; and
- (iii) The air-filled soil porosity value shall be changed from 0.13 ml air/ml soil to zero.

(5) Variable parameter three-phase partitioning model.

(a) **Overview.** This section specifies the procedures and requirements to derive site-specific input parameters for use in the three-phase partitioning model. This method may be used to establish soil concentrations for any hazardous substance. This method may be used to calculate both unsaturated and saturated zone soil concentrations.

This method allows for the substitution of site-specific values for the default values in Equation 747-1 for one or more of the following five input parameters: Distribution coefficient, soil bulk density, soil volumetric water content, soil air content, and dilution factor. The methods that may be used and the requirements that shall be met to derive site-specific values for each of the five input parameters are specified in (b) through (f) of this subsection.

- (b) **Methods for deriving a distribution coefficient (K_d).** To derive a site-specific distribution coefficient, one of the following methods shall be used:
- (i) **Deriving K_d from soil fraction of organic carbon (f_{oc}) measurements.** Site-specific measurements of soil organic carbon may be used to derive distribution coefficients for nonionic hydrophobic organics using Equation 747-2. Soil organic carbon measurements shall be based on uncontaminated soil below the root zone (i.e., soil greater than one meter in depth) that is representative of site conditions or in areas through which contaminants are likely to migrate.

The laboratory protocols for measuring soil organic carbon in the Puget Sound Estuary Program (March, 1986) may be used. Other methods may also be used if approved by the department. All laboratory measurements of soil organic carbon shall be based on methods that do not include inorganic carbon in the measurements.
 - (ii) **Deriving K_d from site data.** Site-specific measurements of the hazardous substance concentrations in the soil and the soil pore water or groundwater may be used, subject to department approval, to derive a distribution coefficient. Distribution coefficients that have been derived from site data shall be based on measurements of soil and groundwater hazardous substance concentrations from the same depth and location. Soil and groundwater samples that have hazardous substances present as a nonaqueous phase liquid (NAPL) shall not be used to derive a distribution coefficient and measures shall be taken to minimize biodegradation and volatilization during sampling, transport and analysis of these samples.
 - (iii) **Deriving K_d from batch tests.** A site-specific distribution coefficient may be derived by using batch equilibrium tests, subject to department approval, to measure hazardous substance adsorption and desorption. The results from the batch test may be used to derive K_d from the sorption/desorption relationship between hazardous substance concentrations in the soil and water. Samples that have hazardous substances present as a nonaqueous phase liquid (NAPL) shall not be used to derive a distribution coefficient and measures shall be taken to minimize biodegradation and volatilization during testing.
 - (iv) **Deriving K_d from the scientific literature.** The scientific literature may be used to derive a site-specific distribution coefficient (K_d) for any hazardous substance, provided the requirements in WAC [173-340-702](#)(14), (15) and (16) are met.
- (c) **Deriving soil bulk density.** ASTM Method 2049 or other methods approved by the department may be used to derive soil bulk density values.
- (d) **Deriving soil volumetric water content using laboratory methods.** ASTM Method 2216 or other methods approved by the department may be used to derive soil volumetric water content values.

- (e) **Estimating soil air content.** An estimate of soil air content may be determined by calculating soil porosity and subtracting the volumetric water content.
- (f) **Deriving a dilution factor from site-specific estimates of infiltration and groundwater flow volume.** Site-specific estimates of infiltration and groundwater flow volume may be used in the following equation to derive a site-specific dilution factor:

Equation 747-3

DF = $(Q_p + Q_a)/Q_p$		
Where:		
DF	=	Dilution factor (dimensionless)
Q_p	=	Volume of water infiltrating (m ³ /yr)
Q_a	=	Groundwater flow (m ³ /yr)

- (i) **Calculating groundwater flow volume.** The following equation shall be used under this method to calculate the volume of groundwater flow (Q_a):

Equation 747-4

$Q_a = K \times A \times I$		
Where:		
Q_a	=	Groundwater flow volume (m ³ /year)
K	=	Hydraulic conductivity (m/year). Site-specific measurements shall be used to derive this parameter.
A	=	Aquifer mixing zone (m ²). The aquifer mixing zone thickness shall not exceed 5 meters in depth and be equal to a unit width of 1 meter, unless it can be demonstrated empirically that the mixing zone thickness exceeds 5 meters.
I	=	Gradient (m/m). Site-specific measurements shall be used to derive this parameter.

- (A) Equation 747-4 assumes the groundwater concentrations of hazardous substances of concern upgradient of the site are not detectable. If this assumption is not true, the dilution factor may need to be adjusted downward in proportion to the upgradient concentration.
- (B) Direct measurement of the flow velocity of groundwater using methods approved by the department may be used as a substitute for measuring the groundwater hydraulic conductivity and gradient.
- (ii) **Calculating or estimating infiltration.** The following equation shall be used under this method to calculate the volume of water infiltrating (Q_p):

Equation 747-5

$Q_p = L \times W \times Inf$		
Where:		
Q_p	=	Volume of water infiltrating (m ³ /year)
L	=	Estimated length of contaminant source area parallel to groundwater flow (m)
W	=	Unit width of contaminant source area (1 meter)
Inf	=	Infiltration (m/year)

- (A) If a default annual infiltration value (Inf) is used, the value shall meet the following requirements. For sites west of the Cascade Mountains, the default annual infiltration value shall be 70 percent of the average annual precipitation amount. For sites east of the Cascade Mountains, the default annual infiltration value shall be 25 percent of the average annual precipitation amount.
- (B) If a site-specific measurement or estimate of infiltration (Inf) is made, it shall be based on site conditions without surface caps (e.g., pavement) or other structures that would control or impede infiltration. The presence of a cover or cap may be considered when evaluating the protectiveness of a remedy under WAC [173-340-350](#) through [173-340-360](#). If a site-specific measurement or estimate of infiltration is made, then it must comply with WAC [173-340-702](#)(14), (15) and (16).

(6) Four-phase partitioning model.

- (a) **Overview.** This subsection specifies the procedures and requirements for establishing soil concentrations through the use of the four-phase partitioning model. This model may be used to derive soil concentrations for any site where hazardous substances are present in the soil as a nonaqueous phase liquid (NAPL). The model is described in (c) of this subsection. Instructions on how to use the model to establish protective soil concentrations are provided in (d) of this subsection.
- (b) **Restrictions on use of the model for alcohol enhanced fuels.** The four-phase partitioning model may be used on a case-by-case basis for soil containing fuels (e.g., gasoline) that have been enhanced with alcohol. If the model is used for alcohol enhanced fuels, then it shall be demonstrated that the effects of cosolvency have been adequately considered and, where necessary, taken into account when applying the model. Use of the model for alcohol enhanced fuels without considering the effects of cosolvency and increased groundwater contamination is prohibited.
- (c) **Description of the model.** The four-phase partitioning model is based on the following three equations:
- (i) **Conservation of volume equation.**

Equation 747-6

n = $\theta_w + \theta_a + \theta_{NAPL}$		
Where:		
n	=	Total soil porosity (ml total pore space/ml total soil volume). Use a default value of 0.43 ml/ml or use a value determined from site-specific measurements.
θ_w	=	Volumetric water content (ml water/ml soil). For unsaturated soil use a default value of 0.3 or a value determined from site-specific measurements. For saturated soil this value is unknown and must be solved for. Volumetric water content equals the total soil porosity minus volume occupied by the NAPL.
θ_a	=	Volumetric air content (ml air volume/ml total soil volume). For unsaturated soil this value is unknown and must be solved for. Volumetric air content equals the total soil porosity minus the volume occupied by the water and NAPL. For saturated soil this value is zero.
θ_{NAPL}	=	Volumetric NAPL content (ml NAPL volume/ml total soil volume). For both unsaturated and saturated soil this value is unknown and must be solved for.

(ii) **Four-phase partitioning equation.**

Equation 747-7

$$\frac{M'_T}{m_{soil}} = \frac{x_i S_i}{\rho_b} \left[\theta_w + K'_{oc} f_{oc} \rho_b + H'_{cc} \theta_a + \frac{GFW_i}{S_i} \rho_{NAPL} \theta_{NAPL} \right]$$

Where:		
M'_T	=	Total mass of each component in the system (mg). This value is derived from site-specific measurements.
m_{soil}	=	Total soil mass (kg).
x_i	=	Mole fraction (at equilibrium) of each component (dimensionless). This value is unknown and must be solved for.
S_i	=	Solubility of each component (mg/l). See Table 747-4 for petroleum hydrocarbons; see the scientific literature for other hazardous substances.
ρ_b	=	Dry soil bulk density (1.5 kg/l).
K'_{oc}	=	Soil organic carbon-water partitioning coefficient for each component (l/kg). See Table 747-4 for petroleum hydrocarbons; see subsection (4)(b) of this section for other hazardous substances.
f_{oc}	=	Mass fraction of soil natural organic carbon (0.001 g soil organic/g soil).
H'_{cc}	=	Henry's law constant for each component (dimensionless). See Table 747-4 for petroleum hydrocarbons; see subsection (4)(c) of this section for other hazardous substances.
GFW_i	=	Gram formula weight, or molecular weight of each component (mg/mol). See Table 747-4 for petroleum hydrocarbons; see the scientific literature for other hazardous substances.
ρ_{NAPL}	=	Molar density of the mixture (mol/l). See Equation 747-8.
<i>Component</i>	=	For petroleum mixtures, this means the petroleum fractions, and organic hazardous substances with a reference dose; for other hazardous substances, this means each organic hazardous substance that is found in the NAPL.

(iii) Molar density equation.

Equation 747-8

$$\rho_{NAPL} = \frac{\left[\frac{\sum x_i GFW_i}{\left(\sum x_i GFW_i / \rho_i \right)} \right]}{\sum x_i GFW_i}$$

$$= \frac{1}{\sum (x_i GFW_i / \rho_i)}$$

Where:		
GFW_i	=	Gram formula weight, or molecular weight of each component (mg/mol). See Table 747-4 for petroleum hydrocarbons; see the scientific literature for other hazardous substances.
x_i	=	Mole fraction (at equilibrium) of each component (dimensionless). This value is unknown and must be solved for.
ρ_i	=	Density of each component (mg/l). See Table 747-4 for petroleum hydrocarbons; see the scientific literature for other hazardous substances.
Component	=	For petroleum mixtures, this means the petroleum fractions plus organic hazardous substances with a reference dose; for other hazardous substances, this means each organic hazardous substance that is found in the NAPL.

(d) Instructions for using the model. This subsection provides instructions for using the four-phase partitioning model to predict groundwater concentrations and to establish protective soil concentrations. The model uses an iterative process to simultaneously solve multiple equations for several unknowns (see step 4 for the number of equations). To predict a groundwater concentration, the mole fraction of each component (at equilibrium) must be known. The predicted groundwater concentration is obtained by multiplying the water solubility of each component by the equilibrated mole fraction (Equation 747-7).

- (i) Step 1: Measure hazardous substance soil concentrations.** Collect and analyze soil samples and, if appropriate, samples of the product released, for each component. For petroleum hydrocarbons, see Table 830-1 for a description of what to analyze for.
- (ii) Step 2: Derive physical/chemical data.** For each of the components, determine the Henry's law constant, water solubility, soil organic carbon-water partitioning coefficient, density and molecular weight values. For petroleum hydrocarbons, see Table 747-4.
- (iii) Step 3: Derive soil parameters.** Derive a value for each of the following soil parameters as follows:

- (A) **Soil organic carbon content.** Use the default value (0.001 g soil organic/g soil) or a site-specific value derived under subsection (5)(b)(i) of this section.
 - (B) **Soil volumetric water content.** Use the default value (0.43 minus the volume of NAPL and air) or a site-specific value derived under subsection (5)(d) of this section.
 - (C) **Soil volumetric air content.** Use the default value (0.13 ml/ml for unsaturated zone soil; zero for saturated zone soil) or a site-specific value derived under subsection (5)(e) of this section.
 - (D) **Soil bulk density and porosity.** Use the default values of 1.5 kg/l for soil bulk density and 0.43 for soil porosity or use site-specific values. If a site-specific value for bulk density is used, the method specified in subsection (5)(c) of this subsection shall be used. If a site-specific bulk density value is used, a site-specific porosity value shall also be used. The site-specific soil porosity value may be calculated using a default soil specific gravity of 2.65 g/ml or measuring the soil specific gravity using ASTM Method D 854.
- (iv) **Step 4: Predict a soil pore water concentration.** Equation 747-7 shall be used to predict the soil pore water concentration for each component. To do this, multiple versions of Equation 747-7 shall be constructed, one for each of the components using the associated parameter inputs for K_{oc} , H_{cc} , GFW, and S . These equations shall then be combined with Equations 747-6 and 747-8 and the condition that $\sum x_i = 1$ and solved simultaneously for the unknowns in the equations (mole fraction of each component (x_i), volumetric NAPL content (θ_{NAPL}), and either the volumetric water content (θ_w) or the volumetric air content (θ_a).
- (v) **Step 5: Derive a dilution factor.** Derive a dilution factor using one of the following two methods:
- (A) Use the default value of 20 for unsaturated soils and one for saturated soils); or
 - (B) Derive a site-specific value using site-specific estimates of infiltration and groundwater flow volume under subsection (5)(f) of this section.
- (vi) **Step 6: Calculate a predicted groundwater concentration.** Calculate a predicted groundwater concentration for each component by dividing the predicted soil pore water concentration for each component by a dilution factor to account for the dilution that occurs once the component enters groundwater.

(vii) **Step 7: Establishing protective soil concentrations.**

- (A) **Petroleum mixtures.** For petroleum mixtures, compare the predicted groundwater concentration for each component and for the total petroleum hydrocarbon mixture (sum of the petroleum components in the NAPL) with the applicable groundwater cleanup level established under WAC [173-340-720](#).
- (I) If the predicted groundwater concentration for each of the components and for the total petroleum hydrocarbon mixture is less than or equal to the applicable groundwater cleanup level, then the soil concentrations measured at the site are protective.
- (II) If the condition in (d)(vii)(A)(I) of this subsection is not met, then the soil concentrations measured at the site are not protective. In this situation, the four-phase partitioning model can be used in an iterative process to calculate protective soil concentrations.
- (B) **Other mixtures.** For mixtures that do not include petroleum hydrocarbons, compare the predicted groundwater concentration for each hazardous substance in the mixture with the applicable groundwater cleanup level established under WAC [173-340-720](#).
- (I) If the predicted groundwater concentration for each of the hazardous substances in the mixture is less than or equal to the applicable groundwater cleanup level, then the soil concentrations measured at the site are protective.
- (II) If the condition in (d)(vii)(B)(I) of this subsection is not met, then the soil concentrations measured at the site are not protective. In this situation, the four-phase partitioning model can be used in an iterative process to calculate protective soil concentrations.

(7) **Leaching tests.**

- (a) **Overview.** This subsection specifies the procedures and requirements for deriving soil concentrations through the use of leaching tests. Leaching tests may be used to establish soil concentrations for the following specified metals: Arsenic, cadmium, total chromium, hexavalent chromium, copper, lead, mercury, nickel, selenium, and zinc (see (b) and (c) of this subsection). Leaching tests may also be used to establish soil concentrations for other hazardous substances, including petroleum hydrocarbons, provided sufficient information is available to correlate leaching test results with groundwater impacts (see (d) of this subsection). Testing of soil samples from the site is required for use of this method.

- (b) **Leaching tests for specified metals.** If leaching tests are used to establish soil concentrations for the specified metals, the following two leaching tests may be used:
- (i) **EPA Method 1312, Synthetic Precipitation Leaching Procedure (SPLP).** Fluid #3 (pH = 5.0), representing acid rain in the western United States, shall be used when conducting this test. This test may underestimate groundwater impacts when acidic conditions exist due to significant biological degradation or for other reasons. Underestimation of groundwater impacts may occur, for example, when soils contaminated with metals are located in wood waste, in municipal solid waste landfills, in high sulfur content mining wastes, or in other situations with a pH < 6. Consequently, this test shall not be used in these situations and the TCLP test should be used instead.
 - (ii) **EPA Method 1311, Toxicity Characteristic Leaching Procedure (TCLP).** Fluid #1 (pH = 4.93), representing organic acids generated by biological degradation processes, shall be used when conducting this test. This test is intended to represent situations where acidic conditions are present due to biological degradation such as in municipal solid waste landfills. Thus, it may underestimate groundwater impacts where this is not the case and the metals of interest are more soluble under alkaline conditions. An example of this would be arsenic occurring in alkaline (pH > 8) waste or soils. Consequently, this test shall not be used in these situations and the SPLP test should be used instead.
- (c) **Criteria for specified metals.** When using either EPA Method 1312 or 1311, the analytical methods used for analysis of the leaching test effluent shall be sufficiently sensitive to quantify hazardous substances at concentrations at the groundwater cleanup level established under WAC [173-340-720](#). For a soil metals concentration derived under (b) of this subsection to be considered protective of groundwater, the leaching test effluent concentration shall meet the following criteria:
- (i) For cadmium, lead and zinc, the leaching test effluent concentration shall be less than or equal to 10 times the applicable groundwater cleanup level established under WAC [173-340-720](#).
 - (ii) For arsenic, total chromium, hexavalent chromium, copper, mercury, nickel and selenium, the leaching test effluent concentration shall be less than or equal to the applicable groundwater cleanup level established under WAC [173-340-720](#).
- (d) **Leaching tests for other hazardous substances.** Leaching tests using the methods specified in this subsection may also be used for hazardous substances other than the metals specifically identified in this subsection, including petroleum hydrocarbons. Alternative leaching test methods may also be used for any hazardous substance, including the metals specifically identified in this subsection. Use of the leaching tests specified in (b) and (c) of this subsection for other hazardous substances or in a manner not specified in (b) and (c) of this subsection, or use of alternative leaching tests for any hazardous substance, is subject to department approval and the user must demonstrate with site-specific field or laboratory data or other empirical data that the leaching test

can accurately predict groundwater impacts. The department will use the criteria in WAC [173-340-702](#)(14), (15) and (16) to evaluate the appropriateness of these alternative methods under WAC [173-340-702](#)(14), (15) and (16).

(8) Alternative fate and transport models.

- (a) Overview.** This subsection specifies the procedures and requirements for establishing soil concentrations through the use of fate and transport models other than those specified in subsections (4) through (6) of this section. These alternative models may be used to establish a soil concentration for any hazardous substance. Site-specific data are required for use of these models.
- (b) Assumptions.** When using alternative models, chemical partitioning and advective flow may be coupled with other processes to predict contaminant fate and transport, provided the following conditions are met:

 - (i) Sorption.** Sorption values shall be derived in accordance with either subsection (4)(c) of this section or the methods specified in subsection (5)(b) of this section.
 - (ii) Vapor phase partitioning.** If Henry's law constant is used to establish vapor phase partitioning, then the constant shall be derived in accordance with subsection (4)(d) of this section.
 - (iii) Natural biodegradation.** Rates of natural biodegradation shall be derived from site-specific measurements.
 - (iv) Dispersion.** Estimates of dispersion shall be derived from either site-specific measurements or literature values.
 - (v) Decaying source.** Fate and transport algorithms may be used that account for decay over time.
 - (vi) Dilution.** Dilution shall be based on site-specific measurements or estimated using a model incorporating site-specific characteristics. If detectable concentrations of hazardous substances are present in upgradient groundwater, then the dilution factor may need to be adjusted downward in proportion to the background (upgradient) concentration.
 - (vii) Infiltration.** Infiltration shall be derived in accordance with subsection (5)(f)(ii)(A) or (B) of this section.
- (c) Evaluation criteria.** Proposed fate and transport models, input parameters, and assumptions shall comply with WAC [173-340-702](#)(14), (15) and (16).

(9) Empirical demonstration.

- (a) Overview.** This subsection specifies the procedures and requirements for demonstrating empirically that soil concentrations measured at the site will not cause an exceedance of the applicable groundwater cleanup levels established under WAC [173-340-720](#). This empirical demonstration may be used for any hazardous

substance. Site-specific data (e.g., groundwater and soil samples) are required under this method. If the demonstrations required under (b) of this subsection cannot be made, then a protective soil concentration shall be established under one of the methods specified in subsections (4) through (8) of this section.

- (b) **Requirements.** To demonstrate empirically that measured soil concentrations will not cause an exceedance of the applicable groundwater cleanup levels established under WAC [173-340-720](#), the following shall be demonstrated:
- (i) The measured groundwater concentration is less than or equal to the applicable groundwater cleanup level established under WAC [173-340-720](#); and
 - (ii) The measured soil concentration will not cause an exceedance of the applicable groundwater cleanup level established under WAC [173-340-720](#) at any time in the future. Specifically, it must be demonstrated that a sufficient amount of time has elapsed for migration of hazardous substances from soil into groundwater to occur and that the characteristics of the site (e.g., depth to groundwater and infiltration) are representative of future site conditions. This demonstration may also include a measurement or calculation of the attenuating capacity of soil between the source of the hazardous substance and the groundwater table using site-specific data.
- (c) **Evaluation criteria.** Empirical demonstrations shall be based on methods approved by the department. Those methods shall comply with WAC [173-340-702](#)(14), (15) and (16).

(10) **Residual saturation.**

- (a) **Overview.** To ensure the soil concentrations established under one of the methods specified in subsections (4) through (9) of this section will not cause an exceedance of the groundwater cleanup level established under WAC [173-340-720](#), the soil concentrations must not result in the accumulation of nonaqueous phase liquid on or in groundwater (see subsection (2)(b) of this section). To determine if this criterion is met, either an empirical demonstration must be made (see (c) of this subsection) or residual saturation screening levels must be established and compared with the soil concentrations established under one of the methods specified in subsections (4) through (9) of this section (see (d) and (e) of this subsection). This subsection applies to any site where hazardous substances are present as a nonaqueous phase liquid (NAPL), including sites contaminated with petroleum hydrocarbons.
- (b) **Definition of residual saturation.** When a nonaqueous phase liquid (NAPL) is released to the soil, some of the NAPL will be held in the soil pores or void spaces by capillary force. For the purpose of this subsection, the concentration of hazardous substances in the soil at equilibrium conditions is called residual saturation. At concentrations above residual saturation, the NAPL will continue to migrate due to gravimetric and capillary forces and may eventually reach the groundwater, provided a sufficient volume of NAPL is released.

- (c) **Empirical demonstration.** An empirical demonstration may be used to show that soil concentrations measured at the site will not result in the accumulation of nonaqueous phase liquid on or in groundwater. An empirical demonstration may be used for any hazardous substance. Site-specific data (e.g., groundwater and soil samples) are required under this method. If the demonstrations required under (c)(i) of this subsection cannot be made, then a protective soil concentration shall be established under (d) and (e) of this subsection.
- (i) **Requirements.** To demonstrate empirically that measured soil concentrations will not result in the accumulation of nonaqueous phase liquid on or in groundwater, the following shall be demonstrated:
- (A) Nonaqueous phase liquid has not accumulated on or in groundwater; and
- (B) The measured soil concentration will not result in nonaqueous phase liquid accumulating on or in groundwater at any time in the future. Specifically, it must be demonstrated that a sufficient amount of time has elapsed for migration of hazardous substances from soil into groundwater to occur and that the characteristics of the site (e.g., depth to groundwater and infiltration) are representative of future site conditions. This demonstration may also include a measurement or calculation of the attenuating capacity of soil between the source of the hazardous substance and the groundwater table using site-specific data.
- (iii) **Evaluation criteria.** Empirical demonstrations shall be based on methods approved by the department. Those methods shall comply with WAC [173-340-702](#)(14), (15) and (16).
- (d) **Deriving residual saturation screening levels.** Unless an empirical demonstration is made under (c) of this subsection, residual saturation screening levels shall be derived and compared with the soil concentrations derived under the methods specified in subsections (4) through (9) of this subsection to ensure that those soil concentrations will not result in the accumulation of nonaqueous phase liquid on or in groundwater. Residual saturation screening levels shall be derived using one of the following methods.
- (i) **Default screening levels for petroleum hydrocarbons.** Residual saturation screening levels for petroleum hydrocarbons may be obtained from the values specified in Table 747-5.
- (ii) **Site-specific screening levels.** Residual saturation screening levels for petroleum hydrocarbons and other hazardous substances may be derived from site-specific measurements. Site-specific measurements of residual saturation shall be based on methods approved by the department. Laboratory measurements or theoretical estimates (i.e., those that are not based on site-specific measurements) of residual saturation shall be supported and verified by site data. This may include an assessment of groundwater monitoring data and soil

concentration data with depth and an analysis of the soil's texture (grain size), porosity and volumetric water content.

- (e) **Adjustment to the derived soil concentrations.** After residual saturation screening levels have been derived under (d) of this subsection, the screening levels shall be compared with the soil concentrations derived under one of the methods specified in subsections (4) through (9) of this subsection. If the residual saturation screening level is greater than or equal to the soil concentration derived using these methods, then no adjustment for residual saturation is necessary. If the residual saturation screening level is less than the soil concentration derived using these methods, then the soil concentration shall be adjusted downward to the residual saturation screening level.
- (11) **Groundwater monitoring requirements.** The department may, on a case-by-case basis, require groundwater monitoring to confirm that hazardous substance soil concentrations derived under this section meet the criterion specified in subsection (2) of this section.

WAC 173-340-7490 Terrestrial ecological evaluation procedures.**(1) Purpose.**

- (a)** WAC 173-340-7490 through [173-340-7494](#) define the goals and procedures the department will use for:
 - (i)** Determining whether a release of hazardous substances to soil may pose a threat to the terrestrial environment;
 - (ii)** Characterizing threats to terrestrial plants or animals exposed to hazardous substances in soil; and
 - (iii)** Establishing site-specific cleanup standards for the protection of terrestrial plants and animals.
- (b)** Information collected during a terrestrial ecological evaluation shall also be used in developing and evaluating cleanup action alternatives and in selecting a cleanup action under WAC [173-340-350](#) through [173-340-390](#). WAC 173-340-7490 through [173-340-7494](#) do not necessarily require a cleanup action for terrestrial ecological protection separate from a human health-based cleanup action. Where appropriate, a terrestrial ecological evaluation may be conducted so as to avoid duplicative studies of soil contamination that will be remediated to address other concerns, as provided in WAC [173-340-350](#)(6)(i).
- (c)** These procedures are not intended to be used to evaluate threats to ecological receptors in sediments, surface water, or wetlands. Procedures for sediment evaluations are described in WAC [173-340-760](#), and for surface water evaluations in WAC [173-340-730](#). Procedures for wetland evaluations shall be determined by the department on a case-by-case basis.

(2) Requirements. In the event of a release of a hazardous substance to the soil at a site, one of the following actions shall be taken:

- (a)** Document an exclusion from any further terrestrial ecological evaluation using the criteria in WAC [173-340-7491](#);
- (b)** Conduct a simplified terrestrial ecological evaluation as set forth in WAC [173-340-7492](#); or
- (c)** Conduct a site-specific terrestrial ecological evaluation as set forth in WAC [173-340-7493](#).

(3) Goal. The goal of the terrestrial ecological evaluation process is the protection of terrestrial ecological receptors from exposure to contaminated soil with the potential to cause significant adverse effects. For species protected under the Endangered Species Act or other applicable laws that extend protection to individuals of a species, a significant adverse effect means an impact that would significantly disrupt normal behavior patterns that include, but are not limited to, breeding, feeding, or sheltering. For all other species, significant adverse effects are effects that impair reproduction, growth or survival.

(a) The simplified terrestrial ecological evaluation process has been developed to be protective of terrestrial ecological receptors at most qualifying sites, while the site-specific terrestrial ecological evaluation process is intended to be highly likely to be protective at any site.

(b) The following policy on terrestrial ecological receptors to be protected applies to all terrestrial ecological evaluations. For land uses other than industrial or commercial, protectiveness is evaluated relative to terrestrial plants, wildlife, and ecologically important functions of soil biota that affect plants or wildlife.

For industrial or commercial properties, current or future potential for exposure to soil contamination need only be evaluated for terrestrial wildlife protection. Plants and soil biota need not be considered unless:

(i) The species is protected under the federal Endangered Species Act; or

(ii) The soil contamination is located on an area of an industrial or commercial property where vegetation must be maintained to comply with local government land use regulations.

(c) For the purposes of this section, "industrial property" means properties meeting the definition in WAC [173-340-200](#). "Commercial property" means properties that are currently zoned for commercial or industrial property use and that are characterized by or are committed to traditional commercial uses such as offices, retail and wholesale sales, professional services, consumer services, and, warehousing.

(d) Any terrestrial remedy, including exclusions, based at least in part on future land use assumptions shall include a completion date for such future development acceptable to the department.

(4) Point of compliance.

(a) **Conditional point of compliance.** For sites with institutional controls to prevent excavation of deeper soil, a conditional point of compliance may be set at the biologically active soil zone. This zone is assumed to extend to a depth of six feet. The department may approve a site-specific depth based on a demonstration that an alternative depth is more appropriate for the site. In making this demonstration, the following shall be considered:

(i) Depth to which soil macro-invertebrates are likely to occur;

(ii) Depth to which soil turnover (bioturbation) is likely to occur due to the activities of soil invertebrates;

(iii) Depth to which animals likely to occur at the site are expected to burrow; and

(iv) Depth to which plant roots are likely to extend.

(b) **Standard point of compliance.** An institutional control is not required for soil contamination that is at least 15 feet below the ground surface. This represents a

reasonable estimate of the depth of soil that could be excavated and distributed at the soil surface as a result of site development activities, resulting in exposure by ecological receptors.

- (5) **Additional measures.** The department may require additional measures to evaluate threats to terrestrial ecological receptors notwithstanding the provisions in this and the following sections, when based upon a site-specific review, the department determines that such measures are necessary to protect the environment.

WAC 173-340-7491 Exclusions from a terrestrial ecological evaluation.

- (1) **Criteria for determining that no further evaluation is required.** No further evaluation is required if the department determines that a site meets any of the criteria in (a) through (d) of this subsection:
- (a) All soil contaminated with hazardous substances is, or will be, located below the point of compliance established under WAC [173-340-7490](#)(4). To qualify for this exclusion, an institutional control shall be required by the department under WAC [173-340-440](#). An institutional control is not required if the contamination is at least fifteen feet below the ground surface (WAC [173-340-7490](#)(4)(b)). An exclusion based on planned future land use shall include a completion date for such future development that is acceptable to the department.
 - (b) All soil contaminated with hazardous substances is, or will be, covered by buildings, paved roads, pavement, or other physical barriers that will prevent plants or wildlife from being exposed to the soil contamination. To qualify for this exclusion, an institutional control shall be required by the department under WAC [173-340-440](#). An exclusion based on planned future land use shall include a completion date for such future development that is acceptable to the department;
 - (c) Where the site conditions are related or connected to undeveloped land in the following manner:
 - (i) For sites contaminated with hazardous substances other than those specified in (c)(ii) of this subsection, there is less than 1.5 acres of contiguous undeveloped land on the site or within 500 feet of any area of the site; and
 - (ii) For sites contaminated with any of the following hazardous substances: Chlorinated dioxins or furans, PCB mixtures, DDT, DDE, DDD, aldrin, chlordane, dieldrin, endosulfan, endrin, heptachlor or heptachlor epoxide, benzene hexachloride, toxaphene, hexachlorobenzene, pentachlorophenol, or pentachlorobenzene, there is less than 1/4 acre of contiguous undeveloped land on or within 500 feet of any area of the site affected by these hazardous substances. This list does not imply that sampling must be conducted for each of these chemicals at every site. Sampling should be conducted for those chemicals that might be present based on available information, such as current and past uses of chemicals at the site; and
 - (iii) For the purposes of (c)(i) and (ii) of this subsection, and Table 749-1, "undeveloped land" shall mean land that is not covered by buildings, roads, paved areas or other barriers that would prevent wildlife from feeding on plants, earthworms, insects or other food in or on the soil. "Contiguous" undeveloped land means an area of undeveloped land that is not divided into smaller areas by highways, extensive paving or similar structures that are likely to reduce the potential use of the overall area by wildlife. Roads, sidewalks and other structures that are unlikely to reduce potential use of the area by wildlife shall not be considered to divide a contiguous area into smaller areas.

- (d) Concentrations of hazardous substances in soil do not exceed natural background levels, as determined under WAC [173-340-709](#).

(2) Procedure for a site that does not qualify for an exclusion.

- (a) Sites that do not qualify for an exclusion under subsection (1) of this section shall conduct a site-specific terrestrial ecological evaluation if any of the following criteria apply:
 - (i) The site is located on, or directly adjacent to, an area where management or land use plans will maintain or restore native or seminative vegetation (e.g., green-belts, protected wetlands, forestlands, locally designated environmentally sensitive areas, open space areas managed for wildlife, and some parks or outdoor recreation areas. This does not include park areas used for intensive sport activities such as baseball or football).
 - (ii) The site is used by a threatened or endangered species; a wildlife species classified by the Washington state department of fish and wildlife as a "priority species" or "species of concern" under Title [77](#) RCW; or a plant species classified by the Washington state department of natural resources natural heritage program as "endangered," "threatened," or "sensitive" under Title [79](#) RCW. For plants, "used" means that a plant species grows at the site or has been found growing at the site. For animals, "used" means that individuals of a species have been observed to live, feed or breed at the site.
 - (iii) The site is located on a property that contains at least ten acres of native vegetation within 500 feet of the site, not including vegetation beyond the property boundaries.
 - (iv) The department determines that the site may present a risk to significant wildlife populations.
- (b) If none of the criteria in (a) of this subsection apply to the site, either a simplified terrestrial ecological evaluation described under WAC [173-340-7492](#) or a site-specific terrestrial ecological evaluation described under WAC [173-340-7493](#) shall be conducted.
- (c) For the purposes of this section, the following definitions shall apply.
 - (i) "Native vegetation" means any plant community native to the state of Washington. The following sources shall be used in making this determination: *Natural Vegetation of Oregon and Washington*, J.F. Franklin and C.T. Dyrness, Oregon State University Press, 1988, and L.C. Hitchcock, C.L. Hitchcock, J.W. Thompson and A. Cronquist, 1955-1969, *Vascular Plants of the Pacific Northwest* (5 volumes). Areas planted with native species for ornamental or landscaping purposes shall not be considered to be native vegetation.
 - (ii) "Seminative vegetation" means a plant community that includes at least some vascular plant species native to the state of Washington. The following shall not be considered seminative vegetation: Areas planted for ornamental or

landscaping purposes, cultivated crops, and areas significantly disturbed and predominantly covered by noxious, introduced plant species or weeds (e.g., Scotch broom, Himalayan blackberry or knap-weed).

WAC 173-340-7492 Simplified terrestrial ecological evaluation procedures.**(1) Purpose.**

- (a)** The simplified terrestrial ecological evaluation process is intended to identify those sites which do not have a substantial potential for posing a threat of significant adverse effects to terrestrial ecological receptors, and thus may be removed from further ecological consideration during the remedial investigation and cleanup process. For remaining sites, the process provides several options, including chemical concentrations that may be used as cleanup levels, and the choice of developing site-specific concentrations using bioassays or conducting a site-specific terrestrial ecological evaluation under WAC [173-340-7493](#).
- (b)** The process is structured with an intent to protect terrestrial wildlife at industrial or commercial sites, and terrestrial plants, soil biota and terrestrial wildlife at other sites, as provided under WAC [173-340-7490](#) (3)(b).
- (c)** The simplified terrestrial ecological evaluation procedures in subsection (2) of this section are organized to focus upon the extent of exposure, exposure pathways, and particular contaminants as key factors in evaluating ecological risk. The steps need not be followed in order, and any one step may be used to determine that no further evaluation is necessary to conclude that a site does not pose a substantial threat of significant adverse effects to terrestrial ecological receptors.
- (d)** If none of the simplified terrestrial ecological evaluation screening step conditions are met, the person conducting the evaluation may use the chemical concentration numbers listed in Table 749-2 as cleanup levels, or shall conduct a site-specific terrestrial ecological evaluation under WAC [173-340-7493](#).

(2) Process for conducting a simplified terrestrial ecological evaluation.

- (a) Exposure analysis.** The evaluation may be ended at a site where:
 - (i)** The total area of soil contamination at the site is not more than 350 square feet; or
 - (ii)** Land use at the site and surrounding area makes substantial wildlife exposure unlikely. Table 749-1 shall be used to make this evaluation.
- (b) Pathways analysis.** The evaluation may be ended if there are no potential exposure pathways from soil contamination to soil biota, plants or wildlife. For a commercial or industrial property, only potential exposure pathways to wildlife (e.g., small mammals, birds) need be considered. Only exposure pathways for priority chemicals of ecological concern listed in Table 749-2 at or above the concentrations provided must be considered. Incomplete pathways may be due to the presence of man-made physical barriers, either currently existing or to be placed (within a time frame acceptable to the department) as part of a remedy or land use. To ensure that such man-made barriers are maintained, a restrictive covenant shall be required by the department under WAC [173-340-440](#) under a consent decree, agreed order or enforcement order, or as a

condition to a written opinion regarding the adequacy of an independent remedial action under WAC [173-340-515](#)(3).

(c) **Contaminants analysis.** The evaluation may be ended if either of the following are true:

- (i) No hazardous substance listed in Table 749-2 for which a value is listed is, or will be, present in the soil at a depth not exceeding the point of compliance established under WAC [173-340-7490](#)(4) and at concentrations higher than the values provided in Table 749-2, using the statistical compliance methods described in WAC [173-340-740](#)(7). An institutional control is required if the contamination is within fifteen feet of the ground surface (see WAC [173-340-7490](#)(4)(b)). If a hazardous substance listed in Table 749-2 does not have a value listed, then the requirements of (c)(ii) of this subsection must be met; or
- (ii) No hazardous substance listed in Table 749-2 is, or will be, present in the soil within six feet of the ground surface at concentrations likely to be toxic, or with the potential to bioaccumulate, based on bioassays using methods approved by the department. An institutional control is required if the contaminant is within fifteen feet of the ground surface. If a hazardous substance listed in Table 749-2 does not have a value listed, then this subparagraph applies.

(3) **Institutional controls.** If any of the conditions listed above in subsection (2)(a)(ii) through (c) of this section are used to end the simplified terrestrial ecological evaluation, institutional controls may be needed to ensure that the condition will continue to be met in the future. Cleanup remedies that rely on chemical concentrations for industrial or commercial sites in Table 749-2 shall include appropriate institutional controls to prevent future exposure to plants or soil biota in the event of a change in land use.

WAC 173-340-7493 Site-specific terrestrial ecological evaluation procedures.**(1) Purpose.**

- (a)** This section sets forth the procedures for conducting a site-specific terrestrial ecological evaluation if any of the conditions specified in WAC [173-340-7491\(2\)\(a\)](#) apply to the site, or if the person conducting the evaluation elects to conduct a site-specific terrestrial ecological evaluation under this section, whether or not a simplified terrestrial ecological evaluation has been conducted under WAC [173-340-7492](#).
- (b)** In addition to the purposes specified in WAC [173-340-7490\(1\)\(a\)](#), the site-specific terrestrial ecological evaluation is intended to facilitate selection of a cleanup action by developing information necessary to conduct evaluations of cleanup action alternatives in the feasibility study.
- (c)** There are two elements in planning a site-specific terrestrial ecological evaluation. Both elements shall be done in consultation with the department and must be approved by the department. The two elements are:
 - (i)** Completing the problem formulation step as required under subsection (2) of this section; and
 - (ii)** Selecting one or more methods under subsection (3) of this section for addressing issues identified in the problem formulation step.
- (d)** After reviewing information developed in the problem formulation step, the department may at its discretion determine that selection of one or more methods for proceeding with the evaluation is not necessary by making either of the following decisions:
 - (i)** No further site-specific terrestrial ecological evaluation is necessary because the cleanup action plans developed for the protection of human health will eliminate exposure pathways of concern to all of the soil contamination.
 - (ii)** A simplified terrestrial ecological evaluation may be conducted under WAC [173-340-7492](#) because this evaluation will adequately identify and address any threats to ecological receptors.

(2) Problem formulation step.

- (a)** To define the focus of the site-specific terrestrial ecological evaluation, identify issues to be addressed in the evaluation, specifying:
 - (i)** **The chemicals of ecological concern.** The person conducting the evaluation may eliminate hazardous substances from further consideration where the maximum or the upper 95 percent confidence limit soil concentration found at the site does not exceed ecological indicator concentrations described in Table 749-3. For industrial or commercial land uses, only the wildlife values need to be considered. Any chemical that exceeds the ecological indicator concentrations

shall be included as a chemical of ecological concern in the evaluation unless it can be eliminated based on the factors listed in WAC [173-340-703\(2\)\(b\)](#).

(Caution on the use of ecological indicator concentrations: These numbers are not cleanup levels, and concentrations that exceed the number do not necessarily require remediation.)

- (ii) **Exposure pathways.** Identify any complete potential pathways for exposure of plants or animals to the chemicals of concern. If there are no complete exposure pathways then no further evaluation is necessary. Incomplete pathways may be due to the presence of man-made physical barriers, either currently existing or to be placed (within a time frame acceptable to the department) as part of a remedy or land use.

To ensure that such man-made barriers are maintained, a restrictive covenant shall be required by the department under WAC [173-340-440](#) under a consent decree, agreed order or enforcement order, or as a condition to a written opinion regarding the adequacy of an independent remedial action under WAC [173-340-515\(3\)](#).

- (iii) **Terrestrial ecological receptors of concern.** Identify current or potential future terrestrial species groups reasonably likely to live or feed at the site. Groupings should represent taxonomically related species with similar exposure characteristics. Examples of potential terrestrial species groups include: Vascular plants, ground-feeding birds, ground-feeding small mammal predators, and herbivorous small mammals.

- (A) From these terrestrial species groups, select those groups to be included in the evaluation. If appropriate, individual terrestrial receptor species may also be included. In selecting species groups or individual species, the following shall be considered:
 - (I) Receptors that may be most at risk for significant adverse effects based on the toxicological characteristics of the chemicals of concern, the sensitivity of the receptor, and on the likely degree of exposure.
 - (II) Public comments.
 - (III) Species protected under applicable state or federal laws that may potentially be exposed to soil contaminants at the site.
 - (IV) Receptors to be considered under different land uses, described under WAC [173-340-7490\(3\)\(b\)](#).
- (B) Surrogate species for which greater information is available, or that are more suitable for site-specific studies, may be used in the analysis when appropriate for addressing issues raised in the problem formulation step.

- (iv) **Toxicological assessment.** Identify significant adverse effects in the receptors of concern that may result from exposure to the chemicals of concern, based on information from the toxicological literature.
 - (b) The following is an example of a site-specific issue developed in this step: Is dieldrin contamination a threat to reproduction in birds feeding on invertebrates and ingesting soil at the site? If so, what measures will eliminate any significant adverse effects?
 - (c) If there are identified information needs for remedy selection or remedial design, these should also be developed as issues for the problem formulation process.
 - (d) The use of assessment and measurement endpoints, as defined in USEPA *Ecological Risk Assessment Guidance for Superfund*, 1997, should be considered to clarify the logical structure of the site-specific terrestrial ecological evaluation under this chapter. Assessment endpoints shall be consistent with the policy objectives described in WAC [173-340-7490](#)(3)(b).
- (3) **Selection of appropriate terrestrial ecological evaluation methods.** If it is determined during the problem formulation step that further evaluation is necessary, the soil concentrations listed in Table 749-3 may be used as the cleanup level at the discretion of the person conducting the evaluation. Alternatively, one or more of the following methods listed in (a) through (g) of this subsection that are relevant to the issues identified in the problem formulation step and that meet the requirements of WAC [173-340-7490](#)(1)(a) shall be conducted. The alternative methods available for conducting a site-specific terrestrial ecological evaluation include the following:
 - (a) **Literature survey.** An analysis based on a literature survey shall be conducted in accordance with subsection (4) of this section and may be used for purposes including the following:
 - (i) Developing a soil concentration for chemicals not listed in Table 749-3.
 - (ii) Identifying a soil concentration for the protection of plants or soil biota more relevant to site-specific conditions than the value listed in Table 749-3.
 - (iii) Obtaining a value for any of the wildlife exposure model variables listed in Table 749-5 to calculate a soil concentration for the protection of wildlife more relevant to site-specific conditions than the values listed in Table 749-3.
 - (b) **Soil bioassays.**
 - (i) Bioassays may use sensitive surrogate organisms not necessarily found at the site provided that the test adequately addresses the issues raised in the problem formulation step. For issues where threats to plant life are a concern, the test described in *Early Seedling Growth Protocol for Soil Toxicity Screening*. Ecology Publication No. [96-324](#) may be used. For sites where risks to soil biota are a concern, the test described in *Earthworm Bioassay Protocol for Soil Toxicity Screening*. Ecology Publication No. [96-327](#) may be used. Other bioassay tests approved by the department may also be used.

- (ii) Soil concentrations protective of soil biota or plants may also be established with soil bioassays that use species ecologically relevant to the site rather than standard test species. Species that do or could occur at the site are considered ecologically relevant.
- (c) **Wildlife exposure model.** Equations and exposure parameters to be used in calculating soil concentrations protective of terrestrial wildlife are provided in Tables 749-4 and 749-5. Changes to this model may be approved by the department under the following conditions:
 - (i) Alternative values for parameters listed in Table 749-5 may be used if they can be demonstrated to be more relevant to site-specific conditions (for example, the value is based on a chemical form of a hazardous substance actually present at the site). An alternative value obtained from the literature shall be supported by a literature survey conducted in accordance with subsection (4) of this section.
 - (ii) Receptor species of concern or exposure pathways identified in the problem formulation step may be added to the model if appropriate on a site-specific basis.
 - (iii) A substitution for one or more of the receptor species listed in Table 749-4 may be made under subsection (7) of this section.
- (d) **Biomarkers.** Biomarker methods may be used if the measurements have clear relevance to issues raised in the problem formulation and the approach has a high probability of detecting a significant adverse effect if it is occurring at the site. The person conducting the evaluation may elect to use criteria such as biomarker effects that serve as a sensitive surrogate for significant adverse effects.
- (e) **Site-specific field studies.** Site-specific empirical studies that involve hypothesis testing should use a conventional "no difference" null hypothesis (e.g., H_0 : Earthworm densities are the same in the contaminated area and the reference (control) area. H_A : Earthworm densities are higher in the reference area than in the contaminated area). In preparing a work plan, consideration shall be given to the adequacy of the proposed study to detect an ongoing adverse effect and this issue shall be addressed in reporting results from the study.
- (f) **Weight of evidence.** A weight of evidence approach shall include a balance in the application of literature, field, and laboratory data, recognizing that each has particular strengths and weaknesses. Site-specific data shall be given greater weight than default values or assumptions where appropriate.
- (g) **Other methods approved by the department.** This may include a qualitative evaluation if relevant toxicological data are not available and cannot be otherwise developed (e.g., through soil bioassay testing).

(4) Literature surveys.

- (a)** Toxicity reference values or soil concentrations established from the literature shall represent the lowest relevant LOAEL found in the literature. Bioaccumulation factor values shall represent a reasonable maximum value from relevant information found in the literature. In assessing relevance, the following principles shall be considered:
- (i)** Literature benchmark values should be obtained from studies that have test conditions as similar as possible to site conditions.
 - (ii)** The literature benchmark values or toxicity reference values should correspond to the exposure route being assessed.
 - (iii)** The toxicity reference value or bioaccumulation factor value shall be as appropriate as possible for the receptor being assessed. The toxicity reference value should be based on a significant endpoint, as described in subsection (2) of this section.
 - (iv)** The literature benchmark value or toxicity reference value should preferably be based on chronic exposure.
 - (v)** The literature benchmark value, toxicity reference value, or bioaccumulation factor should preferably correspond to the chemical form being assessed. Exceptions may apply for toxicity reference values where documented biological transformations occur following uptake of the chemical or where chemical transformations are known to occur in the environment under conditions appropriate to the site.
- (b)** A list of relevant journals and other literature consulted in the survey shall be provided to the department. A table summarizing information from all relevant studies shall be provided to the department in a report, and the studies used to select a proposed value shall be identified. Copies of literature cited in the table that are not in the possession of the department shall be provided with the report. The department may identify relevant articles, books or other documents that shall be included in the survey.

- (5) Uncertainty analysis.** If a site-specific terrestrial ecological evaluation includes an uncertainty analysis, the discussion of uncertainty shall identify and differentiate between uncertainties that can and cannot be quantified, and natural variability. The discussion shall describe the range of potential ecological risks from the hazardous substances present at the site, based on the toxicological characteristics of the hazardous substances present, and evaluate the uncertainty regarding these risks. Potential methods for reducing uncertainty shall also be discussed, such as additional studies or post-remedial monitoring. If multiple lines of independent evidence have been developed, a weight of evidence approach may be used in characterizing uncertainty.
- (6) New scientific information.** The department shall consider proposals for modifications to default values provided in this section based on new scientific information in accordance with WAC [173-340-702](#)(14), (15) and (16).

- (7) **Substitute receptor species.** Substitutions of receptor species and the associated values in the wildlife exposure model described in Table 749-4 may be made subject to the following conditions:
- (a) There is scientifically supportable evidence that a receptor identified in Table 749-4 is not characteristic or a reasonable surrogate for a receptor that is characteristic of the ecoregion where the site is located. "Ecoregions" are defined using EPA's *Ecoregions of the Pacific Northwest* Document No. 600/3-86/033 July 1986 by Omernik and Gallant.
 - (b) The proposed substitute receptor is characteristic of the ecoregion where the site is located and will serve as a surrogate for wildlife species that are, or may become exposed to soil contaminants at the site. The selected surrogate shall be a species that is expected to be vulnerable to the effects of soil contamination relative to the current default species because of high exposure or known sensitivity to hazardous substances found in soil at the site.
 - (c) Scientific studies concerning the proposed substitute receptor species are available in the literature to select reasonable maximum exposure estimates for variables listed in Table 749-4.
 - (d) In choosing among potential substitute receptor species that meet the criteria in (b) and (c) of this subsection, preference shall be given to the species most ecologically similar to the default receptor being replaced.
 - (e) Unless there is clear and convincing evidence that they are not characteristic of the ecoregion where the site is located, the following groups shall be included in the wildlife exposure model: A small mammalian predator on soil-associated invertebrates, a small avian predator on soil-associated invertebrates, and a small mammalian herbivore.
 - (f) To account for uncertainties in the level of protection provided to substitute receptor species and toxicologically sensitive species, the department may require any of the following:
 - (i) Use of toxicity reference values based on no observed adverse effects levels.
 - (ii) Use of uncertainty factors to account for extrapolations between species in toxicity or exposure parameter values; or
 - (iii) Use of a hazard index approach for multiple contaminants to account for additive toxic effects.

WAC 173-340-7494 Priority contaminants of ecological concern.

When the department determines that such measures are necessary to protect the environment, the department may revise the hazardous substances and corresponding concentrations included in Table 749-2, subject to the following:

- (1)** The data indicate a significant tendency of the hazardous substance to persist, bioaccumulate, or be highly toxic to terrestrial ecological receptors;
- (2)** The concentrations for hazardous substances listed in Table 749-2 shall be based on protection of wildlife for industrial and commercial land uses, and upon protection of plants and animals for other land uses.

WAC 173-340-750 Cleanup standards to protect air quality.**(1) General considerations.**

- (a)** This section applies whenever it is necessary to establish air cleanup standards to determine if air emissions at a site pose a threat to human health or the environment. It applies to ambient (outdoor) air and air within any building, utility vault, manhole or other structure large enough for a person to fit into. This section does not apply to concentrations of hazardous substances in the air originating from an industrial or commercial process or operation or to hazardous substances in the air originating from an offsite source. This section does apply to concentrations of hazardous substances in the air originating from other contaminated media or a remedial action at the site. Air cleanup standards shall be established at the following sites:
 - (i)** Where a nonpotable groundwater cleanup level is being established for volatile organic compounds using a site-specific risk assessment under WAC [173-340-720](#)(6).
 - (ii)** Where a soil cleanup level that addresses vapors or dust is being established under WAC [173-340-740](#) or [173-340-745](#).
 - (iii)** Where it is necessary to establish air emission limits for a remedial action.
 - (iv)** At other sites as determined by the department.
- (b)** Cleanup levels to protect air quality shall be based on estimates of the reasonable maximum exposure expected to occur under both current and future site use conditions. The department has determined that residential site use will generally require the most protective air cleanup levels and that exposure to hazardous substances under these conditions represents the reasonable maximum exposure. Air cleanup levels shall use this presumed exposure scenario and be established in accordance with subsection (3) of this section unless the site qualifies for a Method C air cleanup level. If a site qualifies for a Method C air cleanup level, subsection (4) of this section shall be used to establish air cleanup levels.
- (c)** In the event of a release or potential release of hazardous substances into the air at a site at which this section applies under (a) of this subsection, a cleanup action that complies with this chapter shall be conducted to address all areas of the site where the concentration of the hazardous substances in the air exceeds cleanup levels.
- (d)** Air cleanup levels shall be established at concentrations that do not directly or indirectly cause violations of groundwater, surface water, or soil cleanup standards established under this chapter or applicable state and federal laws. A site that qualifies for a Method C air cleanup level under this section does not necessarily qualify for a Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium.
- (e)** The department may require more stringent air cleanup standards than required by this section where, based on a site-specific evaluation, the department determines that this

is necessary to protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC [173-340-702](#) and [173-340-708](#).

(2) Method A air cleanup levels.

This section does not provide procedures for establishing Method A cleanup levels. Method B or C, as appropriate, shall be used to establish air cleanup levels.

(3) Method B air cleanup levels.

(a) Applicability. Method B air cleanup levels consist of standard and modified cleanup levels as described in this subsection. Either standard or modified Method B air cleanup levels may be used at any site.

(b) Standard Method B air cleanup levels. Standard Method B cleanup levels for air shall be at least as stringent as all of the following:

(i) Applicable state and federal laws. Concentrations established under applicable state and federal laws; and

(ii) Human health protection. For hazardous substances for which sufficiently protective health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health and the environment as determined by the following methods:

(A) Noncarcinogens. Concentrations that are estimated to result in no acute or chronic toxic effects on human health and are determined using the following equation and standard exposure assumptions:

Equation 750-1

Air cleanup level = (ug/m³)	Rfd x ABW x UCF x HQ x AT	
	BR x ABS x ED x EF	
Where:		
RfD	=	Reference does as specified in WAC <u>173-340-708</u> (7) (mg/kg-day)
ABW	=	Average body weight over the exposure duration (16 kg)
UCF	=	Unit conversion factor (1,000 ug/mg)
BR	=	Breathing rate (10 m³/day)
ABS	=	Inhalation absorption fraction (1.0) (unitless)
HQ	=	Hazard quotient (1) (unitless)
AT	=	Averaging time (6 years)
ED	=	Exposure duration (6 years)
EF	=	Exposure frequency (1.0) (unitless)

(B) Carcinogens. For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than

or equal to one in 1,000,000 (1×10^{-6}) and are determined using the following equation and standard exposure assumptions:

Equation 750-2

Air cleanup level = (ug/m³)	RISK x ABW x AT x UCF	
	CPF x BR x ABS x ED x EF	
Where:		
RISK	=	Acceptable cancer risk level (1 in 1,000,000) (unitless)
ABW	=	Average body weight over the exposure duration (70 kg)
AT	=	Averaging time (75 years)
UCF	=	Unit conversion factor (1,000 ug/mg)
CPF	=	Carcinogenic potency factor as specified in WAC <u>173-340-708</u> (8) (kg-day/mg)
BR	=	Breathing rate (20 m³/day)
ABS	=	Inhalation absorption fraction (1.0) (unitless)
ED	=	Exposure duration (30 years)
EF	=	Exposure frequency (1.0) (unitless)

(C) **Petroleum mixtures.** For noncarcinogenic effects of petroleum mixtures, a total petroleum hydrocarbon cleanup level shall be calculated using Equation 750-1 and by taking into account the additive effects of the petroleum fractions and volatile organic compounds present in the petroleum mixture. Cleanup levels for other noncarcinogens and known or suspected carcinogens within the petroleum mixture shall be calculated using Equations 750-1 and 750-2. See Table 830-1 for the analyses required for various petroleum products to use this method.

(iii) **Lower explosive limit limitation.** Standard Method B air cleanup levels shall not exceed 10 percent of the lower explosive limit for any hazardous substance or mixture of hazardous substances.

(c) **Modified Method B air cleanup levels.** Modified Method B air cleanup levels are standard Method B air cleanup levels modified with chemical-specific or site-specific data. When making these adjustments, the resultant cleanup levels shall meet applicable state and federal laws, health risk levels and explosive limit limitations required for standard Method B air cleanup levels. Changes to exposure assumptions must comply with WAC [173-340-708](#)(10). The following adjustments may be made to the default assumptions in the standard Method B equations to derive modified Method B cleanup levels:

(i) The inhalation absorption fraction may be modified if the requirements of WAC [173-340-702](#)(14), (15), (16) and WAC [173-340-708](#)(10) are met;

- (ii) Adjustments to the reference dose and cancer potency factor may be made if the requirements in WAC [173-340-708](#)(7) and (8) are met;
 - (iii) The toxicity equivalency factor procedures described in WAC [173-340-708](#)(8) may be used for assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins, chlorinated dibenzofurans and polycyclic aromatic hydrocarbons;
 - (iv) Modifications incorporating new science as provided for in WAC [173-340-702](#)(14), (15) and (16); and
 - (d) **Using modified Method B to evaluate air remediation levels.** In addition to the adjustments allowed under subsection (3)(c) of this section, adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC [173-340-355](#), [173-340-357](#) and [173-340-708](#)(3)(d) and (10)(b).
- (4) **Method C air cleanup levels.**
- (a) **Applicability.** Method C air cleanup levels consist of standard and modified cleanup levels as described in this subsection. Method C air cleanup levels may be approved by the department if the person undertaking the cleanup action can demonstrate that the site qualifies for use of Method C under WAC [173-340-706](#)(1).
 - (b) **Standard Method C air cleanup levels.** Standard Method C air cleanup levels for ambient air shall be at least as stringent as all of the following:
 - (i) **Applicable state and federal laws.** Concentrations established under applicable state and federal laws;
 - (ii) **Human health protection.** For hazardous substances for which sufficiently protective health-based criteria or standards have not been established under applicable state and federal laws, concentrations that protect human health and the environment as determined by the following methods:
 - (A) **Noncarcinogens.** Concentrations that are anticipated to result in no significant acute or chronic effects on human health and are estimated in accordance with Equation 750-1 except that the average body weight shall be 70 kg and the estimated breathing rate shall be 20 m³/day;
 - (B) **Carcinogens.** For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in 100,000 (1×10^{-5}) and are determined in accordance with Equation 750-2.
 - (C) **Petroleum mixtures.** Cleanup levels for petroleum mixtures shall be calculated as specified in subsection (3)(b)(ii)(C) of this section, except that the average body weight shall be 70 kg and the estimated breathing rate shall be 20m³/day.

- (iii) **Lower explosive limit limitation.** Standard Method C air cleanup levels shall not exceed 10 percent of the lower explosive limit for any hazardous substance or mixture of hazardous substances.
 - (c) **Modified Method C air cleanup levels.** Modified Method C air cleanup levels are standard Method C air cleanup levels modified with chemical-specific or site-specific data. The same limitations and adjustments specified in subsection (3)(c) of this section apply to modified Method C cleanup levels.
 - (d) **Using modified Method C to evaluate air remediation levels.** In addition to the adjustments allowed under subsection (4)(c) of this section, adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC [173-340-355](#), [173-340-357](#) and [173-340-708](#)(3)(d) and (10)(b).
- (5) **Adjustments to air cleanup levels.**
- (a) **Total site risk adjustments.** Air cleanup levels for individual hazardous substances developed in accordance with subsections (3) and (4) of this section, including cleanup levels based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one or the total excess cancer risk would exceed one in 100,000 (1×10^{-5}). These adjustments shall be made in accordance with the procedures in WAC [173-340-708](#)(5) and (6). In making these adjustments, the hazard index shall not exceed one and the total excess cancer risk shall not exceed one in 100,000 (1×10^{-5}).
 - (b) **Adjustments to applicable state and federal laws.** Where a cleanup level developed under subsection (3) or (4) of this section is based on an applicable state or federal law and the level of risk upon which the standard is based exceeds an excess cancer risk of one in 100,000 (1×10^{-5}) or a hazard index of one, the cleanup level must be adjusted downward so that the total excess cancer risk does not exceed one in 100,000 (1×10^{-5}) and the hazard index does not exceed one at the site.
 - (c) **Natural background and PQL considerations.** Cleanup levels determined under subsection (3) or (4) of this section, including cleanup levels adjusted under (a) or (b) of this subsection, shall not be set at levels below the practical quantitation limit or natural background, whichever is higher. See WAC [173-340-709](#) and [173-340-707](#) for additional requirements pertaining to practical quantitation limits and natural background.
- (6) **Points of compliance.** Cleanup levels established under this section shall be attained in the ambient (outdoor) air and air within any building, utility vault, manhole or other structure large enough for a person to fit into, throughout the site. For sites determined to be industrial sites under the criteria in WAC [173-340-745](#), the department may approve a conditional point of compliance not to exceed the property boundary. A conditional point of compliance shall not be

approved if use of a conditional point of compliance would pose a threat to human health or the environment.

(7) Compliance monitoring.

- (a)** Where air cleanup levels have been established at a site, monitoring may be required to be conducted to determine if compliance with the air cleanup levels has been achieved. Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC [173-340-410](#). The sample design shall provide data that are representative of the site.
- (b)** Data analysis and evaluation procedures used to evaluate compliance with air cleanup levels shall be defined in a compliance monitoring plan prepared under WAC [173-340-410](#).
- (c)** Averaging times specified in applicable state and federal laws shall be used to demonstrate compliance with those requirements.
- (d)** When cleanup levels are not based on applicable state and federal laws, the following averaging times shall be used:

 - (i)** Compliance with air cleanup levels for noncarcinogens shall be based on 24-hour time weighted averages except where the cleanup level is based upon an inhalation reference dose which specifies an alternate averaging time;
 - (ii)** Compliance with air cleanup levels for carcinogens shall be based on annual average concentrations.

WAC 173-340-760 Sediment cleanup standards.

In addition to complying with the requirements in this chapter, sediment cleanup actions conducted under this chapter must comply with the requirements of chapter [173-204](#) WAC.

Part 8 – General Provisions

WAC 173-340-800 Property access.

- (1) **Normal entry procedures.** Whenever there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents or contractors may, after reasonable notice, enter upon any real property, public or private, to conduct investigations or remedial actions. The notice shall briefly describe the reason for requesting access. For the purpose of this subsection, unless earlier access is granted, reasonable notice shall mean:

 - (a) Written notice to the site owner and operator to the extent known to the department, sent through the United States Postal Service at least three days before entry; or
 - (b) Notice to the site owner and operator to the extent known to the department, in person or by telephone at least twenty-four hours before entry.
- (2) **Notification of property owner.** The department shall ask a resident, occupant, or other persons in custody of the site to identify the name and address of owners of the property. If an owner is identified who has not been previously notified, the department shall make a prompt and reasonable effort to notify such owners of remedial actions planned or conducted.
- (3) **Orders and consent decrees.** Whenever investigations or remedial actions are conducted under a decree or order, a potentially liable person shall not deny access to the department's authorized employees, agents, or contractors to enter and move freely about the property to oversee and verify investigations and remedial actions being performed.
- (4) **Ongoing operations.** Persons gaining access under this section shall take all reasonable precautions to avoid disrupting the ongoing operations on a site. Such persons shall comply with all state and federal safety and health requirements that the department determines to be applicable.
- (5) **Access to documents.** The department's authorized employees, agents or contractors may, after reasonable notice, enter property for the purpose of inspecting documents relating to a release or threatened release at the facility. Persons maintaining such documents shall:

 - (a) Provide access during normal business hours and allow the department to copy these documents; or
 - (b) At the department's request, provide legible copies of the requested documents to the department.
- (6) **Emergency entry.** Notice by the department's authorized employees, agents, or contractors is not required for entry onto property to investigate, mitigate, or abate an emergency posed by the release or threatened release of a hazardous substance. The department will make efforts that are reasonable under the circumstances to promptly notify those owners and operators to the extent known to the department of the actions taken.
- (7) **Other authorities.** Where consent has not been obtained for entry, the department shall secure access in a manner consistent with state and federal law, including compliance with any warrant

requirements. Nothing in this chapter shall affect site access authority granted under other state laws and regulations.

- (8) Access by potentially liable persons.** The department shall make reasonable efforts to facilitate access to real property and documents for persons who are conducting remedial actions under either an order or decree.
- (9) Information sharing.** The department will provide the documents and factual information on releases or threatened releases obtained through this section to persons who request such in accordance with chapter **42.17** RCW and chapter **173-03** WAC. The department does not intend application of these authorities to limit its sharing of such factual information.
- (10) Split samples.** Whenever the department intends to perform sampling at a site, it shall indicate in its notification under subsection (1) of this section whether sampling may occur. The person receiving notice may take split samples, provided this does not interfere with the department's sampling.

WAC 173-340-810 Worker health and safety.

- (1) General provisions.** Requirements under the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Sec. 651 et seq.) and the Washington Industrial Safety and Health Act (chapter [49.17](#) RCW), and regulations promulgated pursuant thereto shall be applicable to remedial actions taken under this chapter. These requirements are subject to enforcement by the designated federal and state agencies. All governmental agencies and private employers are directly responsible for the safety and health of their own employees and compliance with those requirements. Actions taken by the department under this chapter do not constitute an exercise of statutory authority within the meaning of section (4)(b)(1) of the Occupational Safety and Health Act.
- (2) Health and safety plan.** Persons responsible for undertaking remedial actions under this chapter shall prepare a health and safety plan when required by chapter [296-843](#) WAC. Plans prepared under an order or decree shall be submitted for the department's review and comment. The health and safety plan must be consistent with chapter [49.17](#) RCW and regulations adopted under that authority.

WAC 173-340-815 Cultural resource protection.

- (1) **Purpose.** This section specifies requirements that are intended to avoid, minimize, or mitigate adverse effects from remedial actions on archaeological and historic archaeological sites, historic buildings and structures, traditional cultural places, sacred sites, and other cultural resources.
- (2) **Applicable laws.** Remedial actions must comply with applicable state and federal laws regarding cultural resource protection, including:

 - (a) The National Historic Preservation Act of 1966, as amended (54 U.S.C. 300101 et seq.);
 - (b) The Archaeological and Historic Preservation Act of 1974, as amended (54 U.S.C. 312501 et seq.);
 - (c) The Archaeological Resource Protection Act of 1979, as amended (16 U.S.C. 470aa et seq.);
 - (d) The Native American Graves Protection and Repatriation Act of 1990, as amended (25 U.S.C. 3001 et seq.);
 - (e) Chapter [27.53](#) RCW, Archaeological sites and resources;
 - (f) Chapter [27.44](#) RCW, Indian graves and records;
 - (g) Chapter [68.50](#) RCW, Human remains;
 - (h) Chapter [68.60](#) RCW, Abandoned and historic cemeteries and historic graves; and
 - (i) Chapter [43.21C](#) RCW, State Environmental Policy Act, and chapter [197-11](#) WAC, SEPA rules.
- (3) **Consultations and inadvertent discovery plans.**

 - (a) **Applicability.** The requirements in this subsection apply to:
 - (i) Ecology-conducted remedial actions, except initial investigations;
 - (ii) Ecology-supervised remedial actions; and
 - (iii) Ecology-funded independent remedial actions.
 - (b) **Requirements.** For remedial actions identified under (a) of this subsection, ecology will do the following before any person conducts a field activity capable of affecting a cultural resource:
 - (i) Consult with the department of archaeology and historic preservation and affected Indian tribes on the potential effects of planned remedial actions on cultural resources at the site, unless the remedial action is subject to Section 106 review under the National Historic Preservation Act of 1966, as amended (54 U.S.C. 300101 et seq.). Based on the consultations, ecology may require the development and implementation of a cultural resources work plan, such as a

survey or monitoring plan, to identify cultural resources and to avoid, minimize, or mitigate adverse impacts to cultural resources at the site; and

- (ii)** Prepare or require an inadvertent discovery plan for the site.

 - (A)** The inadvertent discovery plan must be prepared using the applicable form provided by ecology or an equivalent document that includes the same or more comprehensive information.
 - (B)** For ecology-supervised remedial actions, ecology may require submittal of the inadvertent discovery plan for its review.
 - (C)** The inadvertent discovery plan must be readily available during all remedial actions at the site. Persons conducting remedial actions at the site must be familiar with the contents and location of the plan.
 - (D)** The inadvertent discovery plan must be updated as needed to reflect the discovery of cultural resources.

WAC 173-340-820 Sampling and analysis plans.

- (1) Purpose.** A sampling and analysis plan is a document that describes the sample collection, handling, and analysis procedures to be used at a site.
- (2) General requirements.** A sampling and analysis plan shall be prepared for all sampling activities that are part of an investigation or a remedial action unless otherwise directed by the department and except for emergencies. The level of detail required in the sampling and analysis plan may vary with the scope and purpose of the sampling activity. Sampling and analysis plans prepared under an order or decree shall be submitted to the department for review and approval.
- (3) Contents.** The sampling and analysis plan shall specify procedures, that ensure sample collection, handling, and analysis will result in data of sufficient quality to plan and evaluate remedial actions at the site. Additionally, information necessary to ensure proper planning and implementation of sampling activities shall be included. References to standard protocols or procedures manuals may be used provided the information referenced is readily available to the department. The sampling and analysis plan shall contain:
 - (a)** A statement on the purpose and objectives of the data collection, including quality assurance and quality control requirements;
 - (b)** Organization and responsibilities for the sampling and analysis activities;
 - (c)** Requirements for sampling activities including:
 - (i)** Project schedule;
 - (ii)** Identification and justification of location and frequency of sampling;
 - (iii)** Identification and justification of parameters to be sampled and analyzed;
 - (iv)** Procedures for installation of sampling devices;
 - (v)** Procedures for sample collection and handling, including procedures for personnel and equipment decontamination;
 - (vi)** Procedures for the management of waste materials generated by sampling activities, including installation of monitoring devices, in a manner that is protective of human health and the environment;
 - (vii)** Description and number of quality assurance and quality control samples, including blanks and spikes;
 - (viii)** Protocols for sample labeling and chain of custody; and
 - (ix)** Provisions for splitting samples, where appropriate.
 - (d)** Procedures for analysis of samples and reporting of results, including:
 - (i)** Detection or quantitation limits;
 - (ii)** Analytical techniques and procedures;
 - (iii)** Quality assurance and quality control procedures; and

(iv) Data reporting procedures, and where appropriate, validation procedures.

The department shall make available guidance for preparation of sampling and analysis plans.

WAC 173-340-830 Sampling and analysis procedures.

- (1) Purpose.** This section specifies requirements for sampling and analysis activities conducted as part of a remedial action. These activities include sample collection, handling, preservation, transportation, holding time, preparation, laboratory analysis, method detection limits, practical quantitation limits, quality assurance, quality control, data reporting, and other technical requirements and specifications.
- (2) Applicability.** All sampling and analysis activities conducted as part of a remedial action must comply with the requirements in this section and, for sites where there is a release or threatened release to sediment, the requirements in chapter [173-204 WAC](#).
- (3) Plans.** All sampling and analysis must be conducted in accordance with a sampling and analysis plan prepared under WAC [173-340-820](#).
- (4) Methods.**
 - (a)** All sampling and analysis must be conducted in accordance with an ecology-approved method or, if ecology has not approved an applicable method, a standard method or procedure such as those specified by the American Society for Testing of Materials, when available.
 - (i)** Ecology will maintain a list of ecology-approved methods and make the list publicly available on ecology's website.
 - (ii)** Ecology will provide notice in the *Contaminated Site Register* when ecology adds or removes a method from the list of ecology-approved methods.
 - (iii)** Ecology will maintain a record of its decisions to add or remove a method from the list of ecology-approved methods.
 - (iv)** Any person may propose another method for ecology review and approval.
 - (b)** The methods used to collect, handle, and analyze samples must be appropriate for the site, the media being analyzed, the hazardous substances being analyzed for, and the anticipated use of the data.
 - (c)** Ecology may require or approve modifications to a method identified under (a) of this subsection to provide lower quantitation limits, improved accuracy, greater precision, or to address the factors in (b) of this subsection.
 - (d)** Ecology may require an analysis to be conducted by more than one method in order to provide higher data quality. For example, ecology may require that different separation and detection techniques be used to verify the presence of a hazardous substance (qualification) and determine the concentration of the hazardous substance (quantitation).
 - (e)** If ecology has approved more than one method with a practical quantitation limit less than the cleanup level, any of those methods may be used. When selecting a method in

these situations, consider confidence in the data, analytical costs, quality assurance, and analysis efficiencies.

(5) Laboratories.

- (a)** All hazardous substance analyses must be conducted by a laboratory accredited under chapter [173-50](#) WAC, unless otherwise approved by ecology.
- (b)** Laboratories must achieve the lowest practical quantitation limits consistent with the selected method and WAC [173-340-707](#).

(6) Petroleum testing. The minimum testing requirements for petroleum releases are identified in Table 830-1.

WAC 173-340-840 General submittal requirements.

Unless otherwise specified by the department, all reports, plans, specifications, and similar information submitted under this chapter shall meet the following requirements:

- (1) **Cover letter.** Include a letter describing the submittal and specifying the desired department action or response.
- (2) **Number of copies.** Three copies of the plan or report shall be submitted to the department's office responsible for the facility. The department may require additional copies to meet public participation and interagency coordination needs.
- (3) **Certification.** Except as otherwise provided for in RCW **18.43.130**, all engineering work submitted under this chapter shall be under the seal of a professional engineer registered with the state of Washington.
- (4) **Visuals.** Maps, figures, photographs, and tables to clarify information or conclusions shall be legible. All maps, plan sheets, drawings, and cross-sections shall meet the following requirements:
 - (a) To facilitate filing and handling, be on paper no larger than 24 x 36 inches and no smaller than 8 1/2 x 11 inches. Photo-reduced copies of plan sheets may be submitted provided at least one full-sized copy of the photo-reduced sheets are included in the submittal.
 - (b) Identify and use appropriate and consistent scales to show all required details in sufficient clarity.
 - (c) Be numbered, titled, have a legend of all symbols used, and specify drafting or origination dates.
 - (d) Contain a north arrow.
 - (e) Use United States Geological Survey datum as a basis for all elevations.
 - (f) For planimetric views, show a survey grid based on monuments established in the field and referenced to state plane coordinates. This requirement does not apply to conceptual diagrams or sketches when the exact location of items shown is not needed to convey the necessary information.
 - (g) Where grades are to be changed, show original topography in addition to showing the changed site topography. This requirement does not apply to conceptual diagrams or sketches where before and after topography is not needed to convey the necessary information.
 - (h) For cross-sections, identify the location and be cross-referenced to the appropriate planimetric view. A reduced diagram of a cross-section location map shall be included on the sheets with the cross-sections.
- (5) **Sampling data.** All sampling data shall be submitted consistent with procedures specified by the department. Unless otherwise specified by the department, all such sampling data shall be

submitted in both printed form and an electronic form capable of being transferred into the department's data management system.

- (6) Appendix.** An appendix providing the principal information relied upon in preparation of the submittal. This should include, for example: A complete citation of references; applicable raw data; a description of, or where readily available, reference to testing and sampling procedures used; relevant calculations; and any other information needed to facilitate review.

WAC 173-340-850 Recordkeeping requirements.

- (1)** Any remedial actions at a facility must be documented with adequate records. Such records may include: Factual information or data; relevant decision documents; and any other relevant, site-specific documents or information.
- (2)** Unless otherwise required by the department, records shall be retained for at least ten years from the date of completion of compliance monitoring or as long as any institutional controls (including land use restrictions) remain in effect, whichever is longer.
- (3)** Records shall be retained by the person taking remedial action, unless the department requires that person to submit the records to the department.
- (4)** The department shall maintain its records in accordance with chapter **42.17** RCW.

WAC 173-340-860 Endangerment.

In the event that the department determines that any activity being performed at a site is creating or has the potential to create a danger to human health or the environment, the department may direct such activities to cease for such period of time as it deems necessary to abate the danger.

WAC 173-340-870 Project Coordinator.

The potentially liable person shall designate a project coordinator for work performed under an order or decree. The project coordinator shall be the designated representative for the purposes of the order or decree. That person shall coordinate with the department and the public and shall facilitate compliance with requirements of the order or decree.

WAC 173-340-880 Emergency actions.

Nothing in this chapter shall limit the authority of the department, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

WAC 173-340-890 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances shall not be affected.

Part 9 – Tables

WAC 173-340-900 Tables.**Table 708-1: Toxicity Equivalency Factors for Chlorinated dibenzo-p-dioxins and Chlorinated Dibenzofurans Congeners**

CAS Number	Hazardous Substance	Toxicity Equivalency Factor (unitless) ⁽¹⁾
Dioxin Congeners		
1746-01-6	2,3,7,8-Tetrachloro dibenzo-p-dioxin	1
40321-76-4	1,2,3,7,8-Pentachloro dibenzo-p-dioxin	1
39227-28-6	1,2,3,4,7,8-Hexachloro dibenzo-p-dioxin	0.1
57653-85-7	1,2,3,6,7,8-Hexachloro dibenzo-p-dioxin	0.1
19408-74-3	1,2,3,7,8,9-Hexachloro dibenzo-p-dioxin	0.1
35822-46-9	1,2,3,4,6,7,8-Heptachloro dibenzo-p-dioxin	0.01
3268-87-9	1,2,3,4,6,7,8,9-Octachloro dibenzo-p-dioxin	0.0003
Furan Congeners		
51207-31-9	2,3,7,8-Tetrachloro dibenzofuran	0.1
57117-41-6	1,2,3,7,8-Pentachloro dibenzofuran	0.03
57117-31-4	2,3,4,7,8-Pentachloro dibenzofuran	0.3
70648-26-9	1,2,3,4,7,8-Hexachloro dibenzofuran	0.1
57117-44-9	1,2,3,6,7,8-Hexachloro dibenzofuran	0.1
72918-21-9	1,2,3,7,8,9-Hexachloro dibenzofuran	0.1
60851-34-5	2,3,4,6,7,8-Hexachloro dibenzofuran	0.1
67562-39-4	1,2,3,4,6,7,8-Heptachloro dibenzofuran	0.01
55673-89-7	1,2,3,4,7,8,9-Heptachloro dibenzofuran	0.01
39001-02-0	1,2,3,4,6,7,8,9-Octachloro dibenzofuran	0.0003

⁽¹⁾ **Source:** Van den Berg et al. 2006. The 2005 World Health Organization Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds. Toxicological Sciences 2006 93(2):223-241; doi:10.1093/toxsci/kfl055.

Table 708-2: Toxicity Equivalency Factors for Minimum Required Carcinogenic Polyaromatic Hydrocarbons (cPAHs) under WAC 173-340-708(e)

CAS Number	Hazardous Substance	TEF (unitless) ⁽¹⁾
50-32-08	benzo[a]pyrene	1
56-55-3	benzo[a]anthracene	0.1
205-99-2	benzo[b]fluoranthene	0.1
207-08-9	benzo[k]fluoranthene	0.1
218-01-9	chrysene	0.01
53-70-3	dibenz[a, h]anthracene	0.1
193-39-5	indeno[1,2,3-cd]pyrene	0.1

⁽¹⁾ **Source:** Cal-EPA, 2005. Air Toxics Hot Spots Program Risk Assessment Guidelines, Part II Technical Support Document for Describing Available Cancer Potency Factors. Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. May 2005.

Table 708-3: Toxicity Equivalency Factors for Carcinogenic Polyaromatic Hydrocarbons (cPAHs) that May be Required under WAC 173-340-708(8)(e)(v)

CAS Number	Hazardous Substance	TEF (unitless) ⁽¹⁾
205-82-3	benzo(j)fluoranthene	0.1
224-42-0	dibenz[a, j]acridine	0.1
226-36-8	dibenz[a, h]acridine	0.1
194-59-2	7H-dibenzo[c, g]carbazole	1
192-65-4	dibenzo[a, e]pyrene	1
189-64-0	dibenzo[a, h]pyrene	10
189-55-9	dibenzo[a, i]pyrene	10
191-30-0	dibenzo[a, l]pyrene	10
3351-31-3	5-methylchrysene	1
5522-43-0	1-nitropyrene	0.1
57835-92-4	4-nitropyrene	0.1
42397-64-8	1,6-dinitropyrene	10
42397-65-9	1,8-dinitropyrene	1
7496-02-8	6-nitrochrysene	10
607-57-8	2-nitrofluorene	0.01
57-97-6	7,12-dimethylbenzanthracene	10
56-49-5	3-methylcholanthrene	1
602-87-9	5-nitroacenaphthene	0.01

⁽¹⁾ **Source:** Cal-EPA, 2005. Air Toxics Hot Spots Program Risk Assessment Guidelines, Part II Technical Support Document for Describing Available Cancer Potency Factors. Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. May 2005.

Table 708-4: Toxicity Equivalency Factors for Dioxin-Like Polychlorinated Biphenyls (PCBs)

CAS Number	Hazardous Substance	TEF (unitless) ⁽¹⁾
Dioxin-Like PCBs		
32598-13-3	3,3',4,4'-Tetrachlorobiphenyl (PCB 77)	0.0001
70362-50-4	3,4,4',5- Tetrachlorobiphenyl (PCB 81)	0.0003
32598-14-4	2,3,3',4,4'-Pentachlorobiphenyl (PCB 105)	0.00003
74472-37-0	2,3,4,4',5-Pentachlorobiphenyl (PCB 114)	0.00003
31508-00-6	2,3',4,4',5-Pentachlorobiphenyl (PCB 118)	0.00003
65510-44-3	2',3,4,4',5-Pentachlorobiphenyl (PCB 123)	0.00003
57465-28-8	3,3',4,4',5-Pentachlorobiphenyl (PCB 126)	0.1
38380-08-4	2,3,3',4,4',5-Hexachlorobiphenyl (PCB 156)	0.00003
69782-90-7	2,3,3',4,4',5'-Hexachlorobiphenyl (PCB 157)	0.00003
52663-72-6	2,3',4,4',5,5'-Hexachlorobiphenyl (PCB 167)	0.00003
32774-16-6	3,3',4,4',5,5'-Hexachlorobiphenyl (PCB 169)	0.03
39635-31-9	2,3,3',4,4',5,5'-Heptachlorobiphenyl (PCB 189)	0.00003

⁽¹⁾ **Source:** Van den Berg et al. 2006. The 2005 World Health Organization Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds. Toxicological Sciences 2006 93(2):223-241; doi:10.1093/toxsci/kfl055.

Table 720-1 Method A Cleanup Levels for Groundwater.^a

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	5 ug/liter ^b
Benzene	71-43-2	5 ug/liter ^c
Benzo(a)pyrene	50-32-8	0.1 ug/liter ^d
Cadmium	7440-43-9	5 ug/liter ^e
Chromium (Total)	7440-47-3	50 ug/liter ^f
DDT	50-29-3	0.3 ug/liter ^g
1,2 Dichloroethane (EDC)	107-06-2	5 ug/liter ^h
Ethylbenzene	100-41-4	700 ug/liter ⁱ
Ethylene dibromide (EDB)	106-93-4	0.01 ug/liter ^j
Gross Alpha Particle Activity		15 pCi/liter ^k
Gross Beta Particle Activity		4 mrem/yr ^l
Lead	7439-92-1	15 ug/liter ^m
Lindane	58-89-9	0.2 ug/liter ⁿ
Methylene chloride	75-09-2	5 ug/liter ^o
Mercury	7439-97-6	2 ug/liter ^p
MTBE	1634-04-4	20 ug/liter ^q
Naphthalenes	91-20-3	160 ug/liter ^r
PAHs (carcinogenic)		See benzo(a)pyrene ^d
PCB mixtures		0.1 ug/liter ^s
Radium 226 and 228		5 pCi/liter ^t
Radium 226		3 pCi/liter ^u
Tetrachloroethylene	127-18-4	5 ug/liter ^v
Toluene	108-88-3	1,000 ug/liter ^w
Total Petroleum Hydrocarbons ^x		
[Note: Must also test for and meet cleanup levels for other petroleum components – see footnotes!]		
Gasoline Range Organics		
Benzene present in groundwater		800 ug/liter
No detectable benzene in groundwater		1,000 ug/liter
Diesel Range Organics		500 ug/liter
Heavy Oils		500 ug/liter
Mineral Oil		500 ug/liter
1,1,1 Trichloroethane	71-55-6	200 ug/liter ^y
Trichloroethylene	79-01-6	5 ug/liter ^z
Vinyl chloride	75-01-4	0.2 ug/liter ^{aa}
Xylenes	1330-20-7	1,000 ug/liter ^{bb}

Footnotes:

- a Caution on misusing this table.** This table has been developed for specific purposes. It is intended to provide conservative cleanup levels for drinking water beneficial uses at sites undergoing routine cleanup actions or those sites with relatively few hazardous substances. This table may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in this table should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in this table do not necessarily mean the groundwater must be restored to those levels at all sites. The level of restoration depends on the remedy selected under WAC [173-340-350](#) through [173-340-390](#).
- b Arsenic.** Cleanup level based on background concentrations for state of Washington.

- c **Benzene.** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.61](#)).
- d **Benzo(a)pyrene.** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.61](#)), adjusted to a 1×10^{-5} risk. If other carcinogenic PAHs are suspected of being present at the site, test for them and use this value as the total concentration that all carcinogenic PAHs must meet using the toxicity equivalency methodology in WAC [173-340-708\(8\)](#).
- e **Cadmium.** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.62](#)).
- f **Chromium (Total).** Cleanup level based on concentration derived using Equation 720-1 for hexavalent chromium. This is a total value for chromium III and chromium VI. If just chromium III is present at the site, a cleanup level of 100 ug/l may be used (based on WAC [246-290-310](#) and [40 C.F.R. 141.62](#)).
- g **DDT (dichlorodiphenyltrichloroethane).** Cleanup levels based on concentration derived using Equation 720-2.
- h **1,2 Dichloroethane (ethylene dichloride or EDC).** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.61](#)).
- i **Ethylbenzene.** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.61](#)).
- j **Ethylene dibromide (1,2 dibromoethane or EDB).** Cleanup level based on concentration derived using Equation 720-2, adjusted for the practical quantitation limit.
- k **Gross Alpha Particle Activity, excluding uranium.** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.15](#)).
- l **Gross Beta Particle Activity, including gamma activity.** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.15](#)).
- m **Lead.** Cleanup level based on applicable state and federal law ([40 C.F.R. 141.80](#)).
- n **Lindane.** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.61](#)).
- o **Methylene chloride (dichloromethane).** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.61](#)).
- p **Mercury.** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.62](#)).
- q **Methyl tertiary-butyl ether (MTBE).** Cleanup level based on federal drinking water advisory level ([EPA-822-F-97-009](#), December 1997).
- r **Naphthalenes.** Cleanup level based on concentration derived using Equation 720-1. This is a total value for naphthalene, 1-methyl naphthalene and 2-methyl naphthalene.
- s **PCB mixtures.** Cleanup level based on concentration derived using Equation 720-2, adjusted for the practical quantitation limit. This cleanup level is a total value for all PCBs.
- t **Radium 226 and 228.** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.15](#)).
- u **Radium 226.** Cleanup level based on applicable state law (WAC [246-290-310](#)).
- v **Tetrachloroethylene.** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.61](#)).
- w **Toluene.** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.61](#)).
- x **Total Petroleum Hydrocarbons (TPH).** TPH cleanup values have been provided for the most common petroleum products encountered at contaminated sites. Where there is a mixture of products or the product composition is unknown, samples must be tested using both the NWTPH-Gx and NWTPH-Dx methods and the lowest applicable TPH cleanup level must be met.
 - **Gasoline range organics** means organic compounds measured using method NWTPH-Gx. Examples are aviation and automotive gasoline. The cleanup level is based on protection of groundwater for noncarcinogenic effects during drinking water use. Two cleanup levels are provided. The higher value is based on the assumption that no benzene is present in the groundwater sample. If any detectable amount of benzene is present in the groundwater sample, then the lower TPH cleanup level must be used. No interpolation between these cleanup levels is allowed. The groundwater cleanup level for any carcinogenic components of the petroleum [such as benzene, EDB and EDC] and any noncarcinogenic components [such as ethylbenzene, toluene, xylenes and MTBE], if present at the site, must also be met. See Table 830-1 for the minimum testing requirements for gasoline releases.
 - **Diesel range organics** means organic compounds measured using NWTPH-Dx. Examples are diesel, kerosene, and #1 and #2 heating oil. The cleanup level is based on protection from noncarcinogenic effects during drinking water use. The groundwater cleanup level for any carcinogenic components of the petroleum [such as benzene and PAHs] and any

noncarcinogenic components [such as ethylbenzene, toluene, xylenes and naphthalenes], if present at the site, must also be met. See Table 830-1 for the minimum testing requirements for diesel releases.

- **Heavy oils** means organic compounds measured using NWTPH-Dx. Examples are #6 fuel oil, bunker C oil, hydraulic oil and waste oil. The cleanup level is based on protection from noncarcinogenic effects during drinking water use, assuming a product composition similar to diesel fuel. The groundwater cleanup level for any carcinogenic components of the petroleum [such as benzene, PAHs and PCBs] and any noncarcinogenic components [such as ethylbenzene, toluene, xylenes and naphthalenes], if present at the site, must also be met. See Table 830-1 for the minimum testing requirements for heavy oil releases.
 - **Mineral oil** means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors measured using NWTPH-Dx. The cleanup level is based on protection from noncarcinogenic effects during drinking water use. Sites using this cleanup level must analyze groundwater samples for PCBs and meet the PCB cleanup level in this table unless it can be demonstrated that: (1) The release originated from an electrical device manufactured after July 1, 1979; or (2) oil containing PCBs was never used in the equipment suspected as the source of the release; or (3) it can be documented that the oil released was recently tested and did not contain PCBs. Method B (or Method C, if applicable) must be used for releases of oils containing greater than 50 ppm PCBs. See Table 830-1 for the minimum testing requirements for mineral oil releases.
- y **1,1,1 Trichloroethane.** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.61](#)).
- z **Trichloroethylene.** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.61](#)).
- aa **Vinyl chloride.** Cleanup level based on applicable state and federal law (WAC [246-290-310](#) and [40 C.F.R. 141.61](#)), adjusted to a 1×10^{-5} risk.
- bb **Xylenes.** Cleanup level based on xylene not exceeding the maximum allowed cleanup level in this table for total petroleum hydrocarbons and on prevention of adverse aesthetic characteristics. This is a total value for all xylenes.

Table 740-1 Method A Soil Cleanup Levels for Unrestricted Land Uses.^a

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	20 mg/kg ^b
Benzene	71-43-2	0.03 mg/kg ^c
Benzo(a)pyrene	50-32-8	0.1 mg/kg ^d
Cadmium	7440-43-9	2 mg/kg ^e
Chromium		
Chromium VI	18540-29-9	19 mg/kg ^{f1}
Chromium III	16065-83-1	2,000 mg/kg ^{f2}
DDT	50-29-3	3 mg/kg ^g
Ethylbenzene	100-41-4	6 mg/kg ^h
Ethylene dibromide (EDB)	106-93-4	0.005 mg/kg ⁱ
Lead	7439-92-1	250 mg/kg ^j
Lindane	58-89-9	0.01 mg/kg ^k
Methylene chloride	75-09-2	0.02 mg/kg ^l
Mercury (inorganic)	7439-97-6	2 mg/kg ^m
MTBE	1634-04-4	0.1 mg/kg ⁿ
Naphthalenes	91-20-3	5 mg/kg ^o
PAHs (carcinogenic)		See benzo(a)pyrene ^d
PCB mixtures		1 mg/kg ^p
Tetrachloroethylene	127-18-4	0.05 mg/kg ^q
Toluene	108-88-3	7 mg/kg ^r
Total Petroleum Hydrocarbons ^s		
[Note: Must also test for and meet cleanup levels for other petroleum components – see footnotes!]		
Gasoline Range Organics		
Gasoline mixtures without benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture		100 mg/kg
All other gasoline mixtures		30 mg/kg
Diesel Range Organics		2,000 mg/kg
Heavy Oils		2,000 mg/kg
Mineral Oil		4,000 mg/kg
1,1,1 Trichloroethane	71-55-6	2 mg/kg ^t
Trichloroethylene	79-01-6	0.03 mg/kg ^u
Xylenes	1330-20-7	9 mg/kg ^v

Footnotes:

- a Caution on misusing this table.** This table has been developed for specific purposes. It is intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or for sites with relatively few hazardous substances, and the site qualifies under WAC [173-340-7491](#) for an exclusion from conducting a simplified or site-specific terrestrial ecological evaluation, or it can be demonstrated using a terrestrial ecological evaluation under WAC [173-340-7492](#) or [173-340-7493](#) that the values in this table are ecologically protective for the site. This table may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in this table should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in this table do not necessarily mean the soil must be restored to these levels at a site. The level of restoration depends on the remedy selected under WAC [173-340-350](#) through [173-340-390](#).
- b Arsenic.** Cleanup level based on direct contact using Equation 740-2 and protection of groundwater for drinking water use using the procedures in WAC [173-340-747\(4\)](#), adjusted for natural background for soil.

- c **Benzene.** Cleanup level based on protection of groundwater for drinking water use, using the procedures in WAC [173-340-747](#)(4) and (6).
- d **Benzo(a)pyrene.** Cleanup level based on direct contact using Equation 740-2. If other carcinogenic PAHs are suspected of being present at the site, test for them and use this value as the total concentration that all carcinogenic PAHs must meet using the toxicity equivalency methodology in WAC [173-340-708](#)(8).
- e **Cadmium.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4), adjusted for the practical quantitation limit for soil.
- f1 **Chromium VI.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- f2 **Chromium III.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4). Chromium VI must also be tested for and the cleanup level met when present at a site.
- g **DDT (dichlorodiphenyltrichloroethane).** Cleanup level based on direct contact using Equation 740-2.
- h **Ethylbenzene.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- i **Ethylene dibromide (1,2 dibromoethane or EDB).** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4) and adjusted for the practical quantitation limit for soil.
- j **Lead.** Cleanup level based on preventing unacceptable blood lead levels.
- k **Lindane.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4), adjusted for the practical quantitation limit.
- l **Methylene chloride (dichloromethane).** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- m **Mercury.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- n **Methyl tertiary-butyl ether (MTBE).** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- o **Naphthalenes.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4). This is a total value for naphthalene, 1-methyl naphthalene and 2-methyl naphthalene.
- p **PCB Mixtures.** Cleanup level based on applicable federal law (40 C.F.R. 761.61). This is a total value for all PCBs.
- q **Tetrachloroethylene.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- r **Toluene.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- s **Total Petroleum Hydrocarbons (TPH).** TPH cleanup values have been provided for the most common petroleum products encountered at contaminated sites. Where there is a mixture of products or the product composition is unknown, samples must be tested using both the NWTPH-Gx and NWTPH-Dx methods and the lowest applicable TPH cleanup level must be met.
- **Gasoline range organics** means organic compounds measured using method NWTPH-Gx. Examples are aviation and automotive gasoline. The cleanup level is based on protection of groundwater for noncarcinogenic effects during drinking water use using the procedures described in WAC [173-340-747](#)(6). Two cleanup levels are provided.
The lower value of 30 mg/kg can be used at any site. When using this lower value, the soil must also be tested for and meet the benzene soil cleanup level. The higher value of 100 mg/kg can only be used if the soil is tested and found to contain no benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture. No interpolation between these cleanup levels is allowed. In both cases, the soil cleanup level for any other carcinogenic components of the petroleum [such as EDB and EDC], if present at the site, must also be met. Also, in both cases, soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes, naphthalene, and MTBE], also must be met if these substances are found to exceed groundwater cleanup levels at the site. See Table 830-1 for the minimum testing requirements for gasoline releases.
- **Diesel range organics** means organic compounds measured using method NWTPH-Dx. Examples are diesel, kerosene, and #1 and #2 heating oil. The cleanup level is based on preventing the accumulation of free product on the groundwater, as described in WAC [173-340-747](#)(10). The soil cleanup level for any carcinogenic components of the

petroleum [such as benzene and PAHs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if these substances are found to exceed the groundwater cleanup levels at the site. See Table 830-1 for the minimum testing requirements for diesel releases.

- **Heavy oils means** organic compounds measured using NWTPH-Dx. Examples are #6 fuel oil, bunker C oil, hydraulic oil and waste oil. The cleanup level is based on preventing the accumulation of free product on the groundwater, as described in WAC [173-340-747](#)(10) and assuming a product composition similar to diesel fuel. The soil cleanup level for any carcinogenic components of the petroleum [such as benzene, PAHs and PCBs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if found to exceed the groundwater cleanup levels at the site. See Table 830-1 for the minimum testing requirements for heavy oil releases.
- **Mineral oil** means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors, measured using NWTPH-Dx. The cleanup level is based on preventing the accumulation of free product on the groundwater, as described in WAC [173-340-747](#)(10). Sites using this cleanup level must also analyze soil samples and meet the soil cleanup level for PCBs, unless it can be demonstrated that: (1) The release originated from an electrical device that was manufactured after July 1, 1979; or (2) oil containing PCBs was never used in the equipment suspected as the source of the release; or (3) it can be documented that the oil released was recently tested and did not contain PCBs. Method B must be used for releases of oils containing greater than 50 ppm PCBs. See Table 830-1 for the minimum testing requirements for mineral oil releases.
- t **1,1,1 Trichloroethane.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- u **Trichloroethylene.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- v **Xylenes.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4). This is a total value for all xylenes.

Table 745-1 Method A Soil Cleanup Levels for Industrial Properties.^a

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	20 mg/kg ^b
Benzene	71-43-2	0.03 mg/kg ^c
Benzo(a)pyrene	50-32-8	2 mg/kg ^d
Cadmium	7440-43-9	2 mg/kg ^e
Chromium		
Chromium VI	18540-29-9	19 mg/kg ^{f1}
Chromium III	16065-83-1	2,000 mg/kg ^{f2}
DDT	50-29-3	4 mg/kg ^g
Ethylbenzene	100-41-4	6 mg/kg ^h
Ethylene dibromide (EDB)	106-93-4	0.005 mg/kg ⁱ
Lead	7439-92-1	1,000 mg/kg ^j
Lindane	58-89-9	0.01 mg/kg ^k
Methylene chloride	75-09-2	0.02 mg/kg ^l
Mercury (inorganic)	7439-97-6	2 mg/kg ^m
MTBE	1634-04-4	0.01 mg/kg ⁿ
Naphthalene	91-20-3	5 mg/kg ^o
PAHs (carcinogenic)		See benzo(a)pyrene ^d
PCB mixtures		10 mg/kg ^p
Tetrachloroethylene	127-18-4	0.05 mg/kg ^q
Toluene	108-88-3	7 mg/kg ^r
Total Petroleum Hydrocarbons ^s		
[Note: Must also test for and meet cleanup levels for other petroleum components – see footnotes!]		
Gasoline Range Organics		
Gasoline mixtures without benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture		100 mg/kg
All other gasoline mixtures		30 mg/kg
Diesel Range Organics		2,000 mg/kg
Heavy Oils		2,000 mg/kg
Mineral Oil		4,000 mg/kg
1,1,1 Trichloroethane	71-55-6	2 mg/kg ^t
Trichloroethylene	79-01-6	0.03 mg/kg ^u
Xylenes	1330-20-7	9 mg/kg ^v

Footnotes:

- a Caution on misusing this table.** This table has been developed for specific purposes. It is intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or for industrial properties with relatively few hazardous substances, and the site qualifies under WAC [173-340-7491](#) for an exclusion from conducting a simplified or site-specific terrestrial ecological evaluation, or it can be demonstrated using a terrestrial ecological evaluation under WAC [173-340-7492](#) or [173-340-7493](#) that the values in this table are ecologically protective for the site. This table may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in this table should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in this table do not necessarily mean the soil must be restored to these levels at a site. The level of restoration depends on the remedy selected under WAC [173-340-350](#) through [173-340-390](#).
- b Arsenic.** Cleanup level based on protection of groundwater for drinking water use, using the procedures in WAC [173-340-747](#)(4), adjusted for natural background for soil.

- c **Benzene.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4) and (6).
- d **Benzo(a)pyrene.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4). If other carcinogenic PAHs are suspected of being present at the site, test for them and use this value as the total concentration that all carcinogenic PAHs must meet using the toxicity equivalency methodology in WAC [173-340-708](#)(8).
- e **Cadmium.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4), adjusted for the practical quantitation limit for soil.
- f1 **Chromium VI.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- f2 **Chromium III.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4). Chromium VI must also be tested for and the cleanup level met when present at a site.
- g **DDT (dichlorodiphenyltrichloroethane).** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- h **Ethylbenzene.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- i **Ethylene dibromide (1,2 dibromoethane or EDB).** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4) and adjusted for the practical quantitation limit for soil.
- j **Lead.** Cleanup level based on direct contact.
- k **Lindane.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4), adjusted for the practical quantitation limit.
- l **Methylene chloride (dichloromethane).** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- m **Mercury.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- n **Methyl tertiary-butyl ether (MTBE).** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- o **Naphthalenes.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4). This is a total value for naphthalene, 1-methyl naphthalene and 2-methyl naphthalene.
- p **PCB Mixtures.** Cleanup level based on applicable federal law (40 C.F.R. 761.61). This is a total value for all PCBs. This value may be used only if the PCB contaminated soils are capped and the cap maintained as required by 40 C.F.R. 761.61. If this condition cannot be met, the value in Table 740-1 must be used.
- q **Tetrachloroethylene.** Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747](#)(4).
- r **Toluene.** Cleanup level based on protection of groundwater for drinking water use, using the procedure described in WAC [173-340-747](#)(4).
- s **Total Petroleum Hydrocarbons (TPH).** TPH cleanup values have been provided for the most common petroleum products encountered at contaminated sites. Where there is a mixture of products or the product composition is unknown, samples must be tested using both the NWTPH-Gx and NWTPH-Dx methods and the lowest applicable TPH cleanup level must be met.
- **Gasoline range organics** means organic compounds measured using method NWTPH-Gx. Examples are aviation and automotive gasoline. The cleanup level is based on protection of groundwater for noncarcinogenic effects during drinking water use using the procedures described in WAC [173-340-747](#)(6). Two cleanup levels are provided. The lower value of 30 mg/kg can be used at any site. When using this lower value, the soil must also be tested for and meet the benzene soil cleanup level. The higher value of 100 mg/kg can only be used if the soil is tested and found to contain no benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture. No interpolation between these cleanup levels is allowed. In both cases, the soil cleanup level for any other carcinogenic components of the petroleum [such as EDB and EDC], if present at the site, must also be met. Also, in both cases, soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes, naphthalene, and MTBE], also must be met if these substances are found to exceed groundwater cleanup levels at the site. See Table 830-1 for the minimum testing requirements for gasoline releases.

- **Diesel range organics** means organic compounds measured using method NWTPH-Dx. Examples are diesel, kerosene, and #1 and #2 heating oil. The cleanup level is based on preventing the accumulation of free product on the groundwater, as described in WAC [173-340-747\(10\)](#). The soil cleanup level for any carcinogenic components of the petroleum [such as benzene and PAHs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if these substances are found to exceed the groundwater cleanup levels at the site. See Table 830-1 for the minimum testing requirements for diesel releases.
- **Heavy oils** means organic compounds measured using NWTPH-Dx. Examples are #6 fuel oil, bunker C oil, hydraulic oil and waste oil. The cleanup level is based on preventing the accumulation of free product on the groundwater, as described in WAC [173-340-747\(10\)](#) and assuming a product composition similar to diesel fuel. The soil cleanup level for any carcinogenic components of the petroleum [such as benzene, PAHs and PCBs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if found to exceed the groundwater cleanup levels at the site. See Table 830-1 for the minimum testing requirements for heavy oil releases.
- **Mineral oil** means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors, measured using NWTPH-Dx. The cleanup level is based on preventing the accumulation of free product on the groundwater, as described in WAC [173-340-747\(10\)](#). Sites using this cleanup level must also analyze soil samples and meet the soil cleanup level for PCBs, unless it can be demonstrated that: (1) The release originated from an electrical device that was manufactured after July 1, 1979; or (2) oil containing PCBs was never used in the equipment suspected as the source of the release; or (3) it can be documented that the oil released was recently tested and did not contain PCBs. Method B or C must be used for releases of oils containing greater than 50 ppm PCBs. See Table 830-1 for the minimum testing requirements for mineral oil releases.
- t **1,1,1 Trichloroethane**. Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747\(4\)](#).
- u **Trichloroethylene**. Cleanup level based on protection of groundwater for drinking water use, using the procedures described in WAC [173-340-747\(4\)](#).
- v **Xylenes**. Cleanup level based on protection of groundwater for drinking water use, using the procedure in WAC [173-340-747\(4\)](#). This is a total value for all xylenes.

Table 747-1 Soil Organic Carbon-Water Partitioning Coefficient (K_{oc}) Values: Nonionizing Organics.

Hazardous Substance	K_{oc} (ml/g)
Acenaphthene	4,898
Aldrin	48,685
Anthracene	23,493
Benzo(a)anthracene	357,537
Benzene	62
Benzo(a)pyrene	968,774
Bis(2-chloroethyl)ether	76
Bis(2-ethylhexyl)phthalate	111,123
Bromoform	126
Butyl benzyl phthalate	13,746
Carbon tetrachloride	152
Chlordane	51,310
Chlorobenzene	224
Chloroform	53
DDD	45,800
DDE	86,405
DDT	677,934
Dibenzo(a,h)anthracene	1,789,101
1,2-Dichlorobenzene (o)	379
1,4-Dichlorobenzene (p)	616
Dichloroethane-1,1	53
Dichloroethane-1,2	38
Dichloroethylene-1,1	65
Trans-1,2 Dichloroethylene	38
Dichloropropane-1,2	47
Dichloropropene-1,3	27
Dieldrin	25,546
Diethyl phthalate	82
Di-n-butyl phthalate	1,567
EDB	66
Endrin	10,811
Endosulfan	2,040
Ethylbenzene	204
Fluoranthene	49,096
Fluorene	7,707
Heptachlor	9,528
Hexachlorobenzene	80,000
α -HCH (α -BHC)	1,762
β -HCH (β -BHC)	2,139
γ -HCH (Lindane)	1,352
MTBE	11
Methoxychlor	80,000
Methyl bromide	9
Methyl chloride	6

Methylene Chloride	10
Naphthalene	1,191
Nitrobenzene	119
PCB-Arochlor 1016	107,285
PCB-Arochlor 1260	822,422
Pentachlorobenzene	32,148
Pyrene	67,992
Styrene	912
1,1,2,2,-Tetrachloroethane	79
Tetrachloroethylene	265
Toluene	140
Toxaphene	95,816
1,2,4-Trichlorobenzene	1,659
Trichloroethane-1,1,1	135
Trichloroethane-1,1,2	75
Trichloroethylene	94
o-Xylene	241
m-Xylene	196
p-Xylene	311

Sources: Except as noted below, the source of the K_{oc} values is the 1996 *EPA Soil Screening Guidance: Technical Background Document*. The values obtained from this document represent the geometric mean of a survey of values published in the scientific literature. Sample populations ranged from 1-65. EDB value from *ATSDR Toxicological Profile* (TP 91/13). MTBE value from *USGS Final Draft Report on Fuel Oxygenates* (March 1996). PCB-Arochlor values from 1994 *EPA Draft Soil Screening Guidance*.

Table 747-2 Predicted Soil Organic Carbon-Water Partitioning Coefficient (K_{oc}) as a Function of pH: Ionizing Organics.

Hazardous Substance	K_{oc} Value (ml/g)		
	pH = 4.9	pH = 6.8	pH = 8.0
Benzoic acid	5.5	0.6	0.5
2-Chlorophenol	398	388	286
2-4-Dichlorophenol	159	147	72
2-4-Dinitrophenol	0.03	0.01	0.01
Pentachlorophenol	9,055	592	410
2,3,4,5-Tetrachlorophenol	17,304	4,742	458
2,3,4,6-Tetrachlorophenol	4,454	280	105
2,4,5-Trichlorophenol	2,385	1,597	298
2,4,6-Trichlorophenol	1,040	381	131

Source: 1996 *EPA Soil Screening Guidance: Technical Background Document*. The predicted K_{oc} values in this table were derived using a relationship from thermodynamic equilibrium considerations to predict the total sorption of an ionizable organic compound from the partitioning of its ionized and neutral forms.

Table 747-3 Metals Distribution Coefficients (K_d).

Hazardous Substance	K_d (L/kg)
Arsenic	29
Cadmium	6.7
Total Chromium	1,000
Chromium VI	19
Copper	22
Mercury	52
Nickel	65
Lead	10,000
Selenium	5
Zinc	62

Source: Multiple sources compiled by the Department of Ecology.

Table 747-4 Petroleum EC Fraction Physical/Chemical Values.

Fuel Fraction	Equivalent Carbon Number ¹	Water Solubility ² (mg/L)	Molecular Weight ³ (g/mol)	Henry's Constant ⁴ (cc/cc)	Gram Formula Weight ⁵ (mg/mol)	Density ⁶ (mg/l)	Soil Organic Carbon-Water Partitioning Coefficient K _{oc} ⁷ (L/kg)
ALIPHATICS							
EC 5 – 6	5.5	36.0	81.0	33.0	81,000	670,000	800
EC > 6 – 8	7.0	5.4	100.0	50.0	100,000	700,000	3,800
EC > 8 – 10	9.0	0.43	130.0	80.0	130,000	730,000	30,200
EC > 10 – 12	11.0	0.034	160.0	120.0	160,000	750,000	234,000
EC > 12 – 16	14.0	7.6E-04	200.0	520.0	200,000	770,000	5.37E+06
EC > 16 – 21	19.0	1.3E-06	270.0	4,900	270,000	780,000	9.55E+09
EC > 21 – 34	28.0	1.5E-11	400.0	100,000	400,000	790,000	1.07E+10
AROMATICS							
EC > 8 – 10	9.0	65.0	120.0	0.48	120,000	870,000	1,580
EC > 10 – 12	11.0	25.0	130.0	0.14	130,000	900,000	2,510
EC > 12 – 16	14.0	5.8	150.0	0.053	150,000	1,000,000	5,010
EC > 16 – 21	19.0	0.51	190.0	0.013	190,000	1,160,000	15,800
EC > 21 – 34	28.0	6.6E-03	240.0	6.7E-04	240,000	1,300,000	126,000
TPH COMPONENTS							
Benzene	6.5	1,750	78.0	0.228	78,000	876,500	62.0
Toluene	7.6	526.0	92.0	0.272	92,000	866,900	140.0
Ethylbenzene	8.5	169.0	106.0	0.323	106,000	867,000	204.0
Total Xylenes ⁸ (average of 3)	8.67	171.0	106.0	0.279	106,000	875,170	233.0
n-Hexane ⁹	6.0	9.5	86.0	74.0	86,000	659,370	3,410
MTBE ¹⁰		50,000	88.0	0.018	88,000	744,000	10.9
Naphthalenes	11.69	31.0	128.0	0.0198	128,000	1,145,000	1,191

Sources:

- Equivalent Carbon Number.** Gustafson, J.B. et al., *Selection of Representative TPH Fractions Based on Fate and Transport Considerations. Total Petroleum Hydrocarbon Criteria Working Group Series, Volume 3* (1997) [hereinafter *Criteria Working Group*].
- Water Solubility.** For aliphatics and aromatics EC groups, *Criteria Working Group*. For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document*.
- Molecular Weight.** *Criteria Working Group*.
- Henry's Constant.** For aliphatics and aromatics EC groups, *Criteria Working Group*. For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document*.
- Gram Formula Weight (GFW).** Based on 1000 x Molecular Weight.
- Density.** For aliphatics and aromatics EC groups, based on correlation between equivalent carbon number and data on densities of individual hazardous substances provided in *Criteria Working Group*. For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document*.
- Soil Organic Carbon-Water Partitioning Coefficient.** For aliphatics and aromatics EC groups, *Criteria Working Group*. For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document*.
- Total Xylenes.** Values for total xylenes are a weighted average of m, o and p xylene based on gasoline composition data from the *Criteria Working Group* (m = 51% of total xylene; o = 28% of total xylene; and p = 21% of total xylene).

- 9 **n-Hexane.** For values other than density, *Criteria Working Group*. For the density value, *Hawley's Condensed Chemical Dictionary*, 11th ed., revised by N. Irving Sax and Richard J. Lewis (1987).
- 10 **MTBE.** *USGS Final Report on Fuel Oxygenates* (March 1996).

Table 747-5 Residual Saturation Screening Levels for TPH.

Fuel	Screening level (mg/kg)
Weathered Gasoline	1,000
Middle Distillates (e.g., Diesel No. 2 Fuel Oil)	2,000
Heavy Fuel Oils (e.g., No. 6 Fuel Oil)	2,000
Mineral Oil	4,000
Unknown Composition or Type	1,000

Note: The residual saturation screening levels for petroleum hydrocarbons specified in Table 747-5 are based on coarse sand and gravelly soils; however, they may be used for any soil type. Screening levels are based on the presumption that there are no preferential pathways for NAPL to flow downward to groundwater. If such pathways exist, more stringent residual saturation screening levels may need to be established.

Table 749-1 Simplified Terrestrial Ecological Evaluation – Exposure Analysis Procedure under WAC 173-340-7492(2)(a)(ii).^a

<p>Estimate the area of contiguous (connected) undeveloped land on the site or within 500 feet of any area of the site to the nearest 1/2 acre (1/4 acre if the area is less than 0.5 acre). "Undeveloped land" means land that is not covered by existing buildings, roads, paved areas or other barriers that will prevent wildlife from feeding on plants, earthworms, insects or other food in or on the soil.</p>		
<p>1) From the table below, find the number of points corresponding to the area and enter this number in the box to the right.</p>		
<u>Area (acres)</u>	<u>Points</u>	
0.25 or less	4	
0.5	5	
1.0	6	
1.5	7	
2.0	8	
2.5	9	
3.0	10	
3.5	11	
4.0 or more	12	
<p>2) Is this an industrial or commercial property? See WAC 173-340-7490(3)(c). If yes, enter a score of 3 in the box to the right. If no, enter a score of 1.</p>		
<p>3) Enter a score in the box to the right for the habitat quality of the site, using the rating system shown below.^b (High = 1, Intermediate = 2, Low = 3)</p>		
<p>4) Is the undeveloped land likely to attract wildlife? If yes, enter a score of 1 in the box to the right. If no, enter a score of 2. See footnote c.</p>		
<p>5) Are there any of the following soil contaminants present: Chlorinated dibenzo-p-dioxins/dibenzofurans, PCB mixtures, DDT, DDE, DDD, aldrin, chlordane, dieldrin, endosulfan, endrin, heptachlor, benzene hexachloride, toxaphene, hexachlorobenzene, pentachlorophenol, pentachlorobenzene? If yes, enter a score of 1 in the box to the right. If no, enter a score of 4.</p>		
<p>6) Add the numbers in the boxes on lines 2 through 5 and enter this number in the box to the right. If this number is larger than the number in the box on line 1, the simplified terrestrial ecological evaluation may be ended under WAC 173-340-7492(2)(a)(ii).</p>		

Footnotes:

- a** It is expected that this habitat evaluation will be undertaken by an experienced field biologist. If this is not the case, enter a conservative score (1) for questions 3 and 4.
- b** **Habitat rating system.** Rate the quality of the habitat as high, intermediate or low based on your professional judgment as a field biologist. The following are suggested factors to consider in making this evaluation:
- Low:** Early successional vegetative stands; vegetation predominantly noxious, nonnative, exotic plant species or weeds. Areas severely disturbed by human activity, including intensively cultivated croplands. Areas isolated from other habitat used by wildlife.
- High:** Area is ecologically significant for one or more of the following reasons: Late-successional native plant communities present; relatively high species diversity; used by an uncommon or rare species; priority habitat (as

defined by the Washington Department of Fish and Wildlife); part of a larger area of habitat where size or fragmentation may be important for the retention of some species.

Intermediate: Area does not rate as either high or low.

- c** Indicate "yes" if the area attracts wildlife or is likely to do so. Examples: Birds frequently visit the area to feed; evidence of high use by mammals (tracks, scat, etc.); habitat "island" in an industrial area; unusual features of an area that make it important for feeding animals; heavy use during seasonal migrations.

Table 749-2 Priority Contaminants of Ecological Concern for Sites that Qualify for the Simplified Terrestrial Ecological Evaluation Procedure.^a

Priority contaminant	Soil concentration (mg/kg)	
	Unrestricted land use ^b	Industrial or commercial site
Metals:^c		
Antimony	See note d	See note d
Arsenic III	20 mg/kg	20 mg/kg
Arsenic V	95 mg/kg	260 mg/kg
Barium	1,250 mg/kg	1,320 mg/kg
Beryllium	25 mg/kg	See note d
Cadmium	25 mg/kg	36 mg/kg
Chromium (total)	42 mg/kg	135 mg/kg
Cobalt	See note d	See note d
Copper	100 mg/kg	550 mg/kg
Lead	220 mg/kg	220 mg/kg
Magnesium	See note d	See note d
Manganese	See note d	23,500 mg/kg
Mercury, inorganic	9 mg/kg	9 mg/kg
Mercury, organic	0.7 mg/kg	0.7 mg/kg
Molybdenum	See note d	71 mg/kg
Nickel	100 mg/kg	1,850 mg/kg
Selenium	0.8 mg/kg	0.8 mg/kg
Silver	See note d	See note d
Tin	275 mg/kg	See note d
Vanadium	26 mg/kg	See note d
Zinc	270 mg/kg	570 mg/kg
Pesticides:		
Aldicarb/aldicarb sulfone (total)	See note d	See note d
Aldrin	0.17 mg/kg	0.17 mg/kg
Benzene hexachloride (including lindane)	10 mg/kg	10 mg/kg
Carbofuran	See note d	See note d
Chlordane	1 mg/kg	7 mg/kg
Chlorpyrifos/chlorpyrifos-methyl (total)	See note d	See note d
DDT/DDD/DDE (total)	1 mg/kg	1 mg/kg
Dieldrin	0.17 mg/kg	0.17 mg/kg
Endosulfan	See note d	See note d
Endrin	0.4 mg/kg	0.4 mg/kg
Heptachlor/heptachlor epoxide (total)	0.6 mg/kg	0.6 mg/kg
Hexachlorobenzene	31 mg/kg	31 mg/kg
Parathion/methyl parathion (total)	See note d	See note d
Pentachlorophenol	11 mg/kg	11 mg/kg
Toxaphene	See note d	See note d

Other chlorinated organics:		
Chlorinated dibenzofurans (total)	3E-06 mg/kg	3E-06 mg/kg
Chlorinated dibenzo-p-dioxins (total)	5E-06 mg/kg	5E-06 mg/kg
Hexachlorophene	See note d	See note d
PCB mixtures (total)	2 mg/kg	2 mg/kg
Pentachlorobenzene	168 mg/kg	See note d
Other nonchlorinated organics:		
Acenaphthene	See note d	See note d
Benzo(a)pyrene	30 mg/kg	300 mg/kg
Bis (2-ethylhexyl) phthalate	See note d	See note d
Di-n-butyl phthalate	200 mg/kg	See note d
Petroleum:		
Gasoline Range Organics	200 mg/kg	12,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface.
Diesel Range Organics	460 mg/kg	15,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface.

Footnotes:

- a** Caution on misusing these chemical concentration numbers. These values have been developed for use at sites where a site-specific terrestrial ecological evaluation is not required. They are not intended to be protective of terrestrial ecological receptors at every site. Exceedances of the values in this table do not necessarily trigger requirements for cleanup action under this chapter. The table is not intended for purposes such as evaluating sludges or wastes. This list does not imply that sampling must be conducted for each of these chemicals at every site. Sampling should be conducted for those chemicals that might be present based on available information, such as current and past uses of chemicals at the site.
- b** Applies to any site that does not meet the definition of industrial or commercial.
- c** For arsenic, use the valence state most likely to be appropriate for site conditions, unless laboratory information is available. Where soil conditions alternate between saturated, anaerobic and unsaturated, aerobic states, resulting in the alternating presence of arsenic III and arsenic V, the arsenic III concentrations shall apply.
- d** Safe concentration has not yet been established. See WAC [173-340-7492\(2\)\(c\)](#).

Table 749-3 Ecological Indicator Soil Concentrations (mg/kg) for Protection of Terrestrial Plants and Animals.^a

For chemicals where a value is not provided, see footnote b.			
Note: These values represent soil concentrations that are expected to be protective at any MTCA site and are provided for use in eliminating hazardous substances from further consideration under WAC 173-340-7493 (2)(a)(i). Where these values are exceeded, various options are provided for demonstrating that the hazardous substance does not pose a threat to ecological receptors at a site, or for developing site-specific remedial standards for eliminating threats to ecological receptors. See WAC 173-340-7493 (1)(b)(i), 173-340-7493 (2)(a)(ii) and 173-340-7493 (3).			
Hazardous Substance ^b	Plants ^c	Soil Biota ^d	Wildlife ^e
Metals^f:			
Aluminum (soluble salts)	50		
Antimony	5		
Arsenic III			7
Arsenic V	10	60	132
Barium	500		102
Beryllium	10		
Boron	0.5		
Bromine	10		
Cadmium	4	20	14
Chromium (total)	42 ^g	42 ^g	67
Cobalt	20		
Copper	100	50	217
Fluorine	200		
Iodine	4		
Lead	50	500	118
Lithium	35 ^g		
Manganese	1,100 ^g		1,500
Mercury, inorganic	0.3	0.1	5.5
Mercury, organic			0.4
Molybdenum	2		7
Nickel	30	200	980
Selenium	1	70	0.3
Silver	2		
Technetium	0.2		
Thallium	1		
Tin	50		
Uranium	5		
Vanadium	2		
Zinc	86 ^g	200	360
Pesticides:			
Aldrin			0.1
Benzene hexachloride (including lindane)			6
Chlordane		1	2.7
DDT/DDD/DDE (total)			0.75

Dieldrin			0.07
Endrin			0.2
Hexachlorobenzene			17
Heptachlor/heptachlor epoxide (total)			0.4
Pentachlorophenol	3	6	4.5
Other chlorinated organics:			
1,2,3,4-Tetrachlorobenzene		10	
1,2,3-Trichlorobenzene		20	
1,2,4-Trichlorobenzene		20	
1,2-Dichloropropane		700	
1,4-Dichlorobenzene		20	
2,3,4,5-Tetrachlorophenol		20	
2,3,5,6-Tetrachloroaniline	20	20	
2,4,5-Trichloroaniline	20	20	
2,4,5-Trichlorophenol	4	9	
2,4,6-Trichlorophenol		10	
2,4-Dichloroaniline		100	
3,4-Dichloroaniline		20	
3,4-Dichlorophenol	20	20	
3-Chloroaniline	20	30	
3-Chlorophenol	7	10	
Chlorinated dibenzofurans (total)			2E-06
Chloroacetamide		2	
Chlorobenzene		40	
Chlorinated dibenzo-p-dioxins (total)			2E-06
Hexachlorocyclopentadiene	10		
PCB mixtures (total)	40		0.65
Pentachloroaniline		100	
Pentachlorobenzene		20	
Other nonchlorinated organics:			
2,4-Dinitrophenol	20		
4-Nitrophenol		7	
Acenaphthene	20		
Benzo(a)pyrene			12
Biphenyl	60		
Diethylphthalate	100		
Dimethylphthalate		200	
Di-n-butyl phthalate	200		
Fluorene		30	
Furan	600		
Nitrobenzene		40	
N-nitrosodiphenylamine		20	
Phenol	70	30	
Styrene	300		
Toluene	200		

Petroleum:			
Gasoline Range Organics		100	5,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface.
Diesel Range Organics		200	6,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface.

Footnotes:

- a** Caution on misusing ecological indicator concentrations. Exceedances of the values in this table do not necessarily trigger requirements for cleanup action under this chapter. Natural background concentrations may be substituted for ecological indicator concentrations provided in this table. The table is not intended for purposes such as evaluating sludges or wastes.

This list does not imply that sampling must be conducted for each of these chemicals at every site. Sampling should be conducted for those chemicals that might be present based on available information, such as current and past uses of chemicals at the site.
- b** For hazardous substances where a value is not provided, plant and soil biota indicator concentrations shall be based on a literature survey conducted in accordance with WAC [173-340-7493](#)(4) and calculated using methods described in the publications listed below in footnotes c and d. Methods to be used for developing wildlife indicator concentrations are described in Tables 749-4 and 749-5.
- c** Based on benchmarks published in *Toxicological Benchmarks for Screening Potential Contaminants of Concern for Effects on Terrestrial Plants: 1997 Revision*, Oak Ridge National Laboratory, 1997.
- d** Based on benchmarks published in *Toxicological Benchmarks for Potential Contaminants of Concern for Effects on Soil and Litter Invertebrates and Heterotrophic Process*, Oak Ridge National Laboratory, 1997.
- e** Calculated using the exposure model provided in Table 749-4 and chemical-specific values provided in Table 749-5. Where both avian and mammalian values are available, the wildlife value is the lower of the two.
- f** For arsenic, use the valence state most likely to be appropriate for site conditions, unless laboratory information is available. Where soil conditions alternate between saturated, anaerobic and unsaturated, aerobic states, resulting in the alternating presence of arsenic III and arsenic V, the arsenic III concentrations shall apply.
- g** Benchmark replaced by Washington state natural background concentration.

Table 749-4 Wildlife Exposure Model for Site-specific Evaluations.^a

Plant	
K _{Plant}	Plant uptake coefficient (dry weight basis)
	Units: mg/kg plant/mg/kg soil
	Value: chemical-specific (see Table 749-5)
Soil biota	
Surrogate receptor: Earthworm	
BAF _{Worm}	Earthworm bioaccumulation factor (dry weight basis)
	Units: mg/kg worm/mg/kg soil
	Value: chemical-specific (see Table 749-5)
Mammalian predator	
Surrogate receptor: Shrew (<i>Sorex</i>)	
P _{SB} (shrew)	Proportion of contaminated food (earthworms) in shrew diet
	Units: unitless
	Value: 0.50
FIR _{Shrew, DW}	Food ingestion rate (dry weight basis)
	Units: kg dry food/kg body weight – day
	Value: 0.45
SIR _{Shrew, DW}	Soil ingestion rate (dry weight basis)
	Units: kg dry soil/kg body weight – day
	Value: 0.0045
RGA _F _{Soil, shrew}	Gut absorption factor for a hazardous substance in soil expressed relative to the gut absorption factor for the hazardous substance in food.
	Units: unitless
	Value: chemical-specific (see Table 749-5)
T _{Shrew}	Toxicity reference value for shrew
	Units: mg/kg - day
	Value: chemical-specific (see Table 749-5)
Home range	0.1 Acres
Avian predator	
Surrogate receptor: American robin (<i>Turdus migratorius</i>)	
P _{SB} (Robin)	Proportion of contaminated food (soil biota) in robin diet
	Unit: unitless
	Value: 0.52
FIR _{Robin, DW}	Food ingestion rate (dry weight basis)
	Units: kg dry food/kg body weight – day
	Value: 0.207
SIR _{Robin, DW}	Soil ingestion rate (dry weight basis)
	Units: kg dry soil/kg body weight – day
	Value: 0.0215
RGA _F _{Soil, robin}	Gut absorption factor for a hazardous substance in soil expressed relative to the gut absorption factor for the hazardous substance in food.
	Units: unitless
	Value: chemical-specific (see Table 749-5)

T _{Robin}	Toxicity reference value for robin
	Units: mg/kg – day
	Value: chemical-specific (see Table 749-5)
Home range	0.6 acres
Mammalian herbivore	
Surrogate receptor: Vole (<i>Microtus</i>)	
P _{Plant, vole}	Proportion of contaminated food (plants) in vole diet
	Units: unitless
	Value: 1.0
FIR _{Vole, DW}	Food ingestion rate (dry weight basis)
	Units: kg dry food/kg body weight – day
	Value: 0.315
SIR _{Vole, DW}	Soil ingestion rate (dry weight basis)
	Units: kg dry soil/kg body weight – day
	Value: 0.0079
RGAF _{Soil, vole}	Gut absorption factor for a hazardous substance in soil expressed relative to the gut absorption factor for the hazardous substance in food.
	Units: unitless
	Value: chemical-specific (see Table 749-5)
T _{Vole}	Toxicity reference value for vole
	Units: mg/kg – day
	Value: chemical-specific (see Table 749-5)
Home range	0.08 acres
Soil concentrations for wildlife protection^b	
(1) Mammalian predator:	
$SC_{MP} = (T_{Shrew}) / [(FIR_{Shrew, DW} \times P_{SB (shrew)} \times BAF_{Worm}) + (SIR_{Shrew, DW} \times RGAF_{Soil, shrew})]$	
(2) Avian predator:	
$SC_{AP} = (T_{Robin}) / [(FIR_{Robin, DW} \times P_{SB (Robin)} \times BAF_{Worm}) + (SIR_{Robin, DW} \times RGAF_{Soil, robin})]$	
(3) Mammalian herbivore:	
$SC_{MH} = (T_{Vole}) / [(FIR_{Vole, DW} \times P_{Plant, vole} \times K_{Plant}) + (SIR_{Vole, DW} \times RGAF_{Soil, vole})]$	

Footnotes:

- a** Substitutions for default receptors may be made as provided for in WAC [173-340-7493\(7\)](#). If a substitute species is used, the values for food and soil ingestion rates, and proportion of contaminated food in the diet, may be modified to reasonable maximum exposure estimates for the substitute species based on a literature search conducted in accordance with WAC [173-340-7493\(4\)](#).
- Additional species may be added on a site-specific basis as provided in WAC [173-340-7493\(2\)\(a\)](#).
- The department shall consider proposals for modifications to default values provided in this table based on new scientific information in accordance with WAC [173-340-702\(14\)](#).
- b** Use the lowest of the three concentrations calculated as the wildlife value.

Table 749-5 Default Values for Selected Hazardous Substances for use with the Wildfire Exposure Model in Table 749-4.^a

Hazardous Substance	Toxicity reference value (mg/kg - d)				
	BAF _{Worm}	K _{Plant}	Shrew	Vole	Robin
Metals:					
Arsenic III	1.16	0.06	1.89	1.15	
Arsenic V	1.16	0.06	35	35	22
Barium	0.36		43.5	33.3	
Cadmium	4.6	0.14	15	15	20
Chromium	0.49		35.2	29.6	5
Copper	0.88	0.020	44	33.6	61.7
Lead	0.69	0.0047	20	20	11.3
Manganese	0.29		624	477	
Mercury, inorganic	1.32	0.0854	2.86	2.18	0.9
Mercury, organic	1.32		0.352	0.27	0.064
Molybdenum	0.48	1.01	3.09	2.36	35.3
Nickel	0.78	0.047	175.8	134.4	107
Selenium	10.5	0.0065	0.725	0.55	1
Zinc	3.19	0.095	703.3	537.4	131
Pesticides:					
Aldrine	4.77	0.007 ^b	2.198	1.68	0.06
Benzene hexachloride (including lindane)	10.1				7
Chlordane	17.8	0.011 ^b	10.9	8.36	10.7
DDT/DDD/DDE	10.6	0.004 ^b	8.79	6.72	0.87
Dieldrin	28.8	0.029 ^b	0.44	0.34	4.37
Endrin	3.6	0.038 ^b	1.094	0.836	0.1
Heptachlor/heptachlor epoxide	10.9	0.027 ^b	2.857	2.18	0.48
Hexachlorobenzene	1.08				2.4
Pentachlorophenol	5.18	0.043 ^b	5.275	4.03	
Other chlorinated organics:					
Chlorinated dibenzofurans	48				1.0E-05
Chlorinated dibenzo-p-dioxins	48	0.005 ^b	2.2E-05	1.7E-05	1.4E-04
PCB mixtures	4.58	0.087 ^b	0.668	0.51	1.8
Other nonchlorinated organics:					
Benzo(a)pyrene	0.43	0.011	1.19	0.91	

Footnotes:

- a** For hazardous substances not shown in this table, use the following default values. Alternatively, use values established from a literature survey conducted in accordance with WAC [173-340-7493\(4\)](#) and approved by the department.

K_{Plant}:

- Metals (including metalloid elements): 1.01
- Organic chemicals: $K_{Plant} = 10^{(1.588 - (0.578 \log K_{ow}))}$, where $\log K_{ow}$ is the logarithm of the octanol-water partition coefficient.

BAF_{Worm}:

- Metals (including metalloid elements): 4.6

- Nonchlorinated organic chemicals:

$\log K_{ow} < 5$: 0.7

$\log K_{ow} \geq 5$: 0.9

- Chlorinated organic chemicals:

$\log K_{ow} < 5$: 4.7

$\log K_{ow} \geq 5$: 11.8

RGAF_{Soil} (all receptors): 1.0

Toxicity reference values (all receptors): Values established from a literature survey conducted in accordance with WAC [173-340-7493\(4\)](#).

Site-specific values may be substituted for default values, as described below:

K_{Plant}: Value from a literature survey conducted in accordance with WAC [173-340-7493\(4\)](#) or from empirical studies at the site.

BAF_{Worm}: Value from a literature survey conducted in accordance with WAC [173-340-7493\(4\)](#) or from empirical studies at the site.

RGAF_{Soil} (all receptors): Value established from a literature survey conducted in accordance with WAC [173-340-7493\(4\)](#).

Toxicity reference values (all receptors): Default toxicity reference values provided in this table may be replaced by a value established from a literature survey conducted in accordance with WAC [173-340-7493\(4\)](#).

- b** Calculated from $\log K_{ow}$ using formula in footnote a.

Table 830-1 Required Testing for Petroleum Releases.

	Gasoline Range Organics (GRO) (1)	Diesel Range Organics (DRO) (2)	Heavy Oils (DRO) (3)	Mineral Oils (4)	Waste Oils and Unknown Oils (5)
Volatile Petroleum Compounds					
Benzene	X ⁽⁶⁾	X ⁽⁷⁾			X ⁽⁸⁾
Toluene	X ⁽⁶⁾	X ⁽⁷⁾			X ⁽⁸⁾
Ethylbenzene	X ⁽⁶⁾	X ⁽⁷⁾			X ⁽⁸⁾
Xylenes	X ⁽⁶⁾	X ⁽⁷⁾			X ⁽⁸⁾
n-Hexane	X ⁽⁹⁾				
Fuel Additives and Blending Compounds					
Dibromoethane, 1-2 (EDB); and Dichloroethane, 1-2 (EDC)	X ⁽¹⁰⁾				X ⁽⁸⁾
Methyl tertiary-butyl ether (MTBE)	X ⁽¹¹⁾				X ⁽⁸⁾
Total Lead & Other Additives	X ⁽¹²⁾				X ⁽⁸⁾
Other Petroleum Components					
Carcinogenic PAHs		X ⁽¹³⁾	X ⁽¹³⁾		X ⁽⁸⁾
Naphthalenes	X ⁽¹⁴⁾	X ⁽¹⁴⁾	X ⁽¹⁴⁾		X ⁽¹⁴⁾
Other Compounds					
Polychlorinated Biphenyls (PCBs)			X ⁽¹⁵⁾	X ⁽¹⁵⁾	X ⁽⁸⁾
Halogenated Volatile Organic Compounds (VOCs)					X ⁽⁸⁾
Other	X ⁽¹⁶⁾	X ⁽¹⁶⁾	X ⁽¹⁶⁾	X ⁽¹⁶⁾	X ⁽¹⁶⁾
Total Petroleum Hydrocarbons Methods					
TPH Analytical Method for Total TPH (Method A Cleanup Levels) (17)	NWTPH-Gx	NWTPH-Dx	NWTPH-Dx	NWTPH-Dx	NWTPH-Gx & NWTPH-Dx
TPH Analytical Methods for TPH fractions (Methods B or C) (17)	VPH	EPH	EPH	EPH	VPH and EPH

Use of Table 830-1: An "X" in the box means that the testing requirement applies to groundwater and soil if a release is known or suspected to have occurred to that medium, unless otherwise specified in the footnotes. A box with no "X" indicates (except in the last two rows) that, for the type of petroleum product release indicated in the top row, analyses for the hazardous substance(s) named in the far-left column corresponding to the empty box are not typically required as part of the testing for petroleum releases. However, such analyses may be required based on other site-specific information.

Note that testing for Total Petroleum Hydrocarbons (TPH) is required for every type of petroleum release, as indicated in the bottom two rows of the table. The testing method for TPH depends on the type of petroleum product released and whether

Method A or Method B or C is being used to determine TPH cleanup levels. See WAC [173-340-830](#) for analytical procedures. **The footnotes to this table are important for understanding the specific analytical requirements for petroleum releases.**

Footnotes:

- (1) The following petroleum products are common examples of GRO: automotive and aviation gasolines, mineral spirits, stoddard solvents, and naphtha. To be in this range, 90 percent of the petroleum components need to be quantifiable using the NWTPH-Gx; if NWTPH-HCID results are used for this determination, then 90 percent of the "area under the TPH curve" must be quantifiable using NWTPH-Gx. Products such as jet fuel, diesel No. 1, kerosene, and heating oil may require analysis as both GRO and DRO depending on the range of petroleum components present (range can be measured by NWTPH-HCID). (See footnote 17 on analytical methods.)
- (2) The following petroleum products are common examples of DRO: Diesel No. 2, fuel oil No. 2, light oil (including some bunker oils). To be in this range, 90 percent of the petroleum components need to be quantifiable using the NWTPH-Dx quantified against a diesel standard. Products such as jet fuel, diesel No. 1, kerosene, and heating oil may require analysis as both GRO and DRO depending on the range of petroleum components present as measured in NWTPH-HCID.
- (3) The following petroleum products are common examples of the heavy oil group: Motor oils, lube oils, hydraulic fluids, etc. Heavier oils may require the addition of an appropriate oil range standard for quantification.
- (4) Mineral oil means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors.
- (5) The waste oil category applies to waste oil, oily wastes, and unknown petroleum products and mixtures of petroleum and nonpetroleum substances. Analysis of other chemical components (such as solvents) than those listed may be required based on site-specific information. Mixtures of identifiable petroleum products (such as gasoline and diesel, or diesel and motor oil) may be analyzed based on the presence of the individual products, and need not be treated as waste and unknown oils.
- (6) When using Method A, testing soil for benzene is required. Furthermore, testing groundwater for BTEX is necessary when a petroleum release to groundwater is known or suspected. If the groundwater is tested and toluene, ethylbenzene or xylene is in the groundwater above its respective Method A cleanup level, the soil must also be tested for that chemical. When using Method B or C, testing the soil for BTEX is required and testing for BTEX in groundwater is required when a release to groundwater is known or suspected.
- (7)(a) For DRO releases from other than home heating oil systems, follow the instructions for GRO releases in Footnote (6).
- (b) For DRO releases from typical home heating oil systems (systems of 1,100 gallons or less storing heating oil for residential consumptive use on the premises where stored), testing for BTEX is not usually required for either groundwater or soil. Testing of the groundwater is also not usually required for these systems; however, if the groundwater is tested and benzene is found in the groundwater, the soil must be tested for benzene.
- (8) Testing is required in a sufficient number of samples to determine whether this chemical is present at concentrations of concern. If the chemical is found to be at levels below the applicable cleanup level, then no further analysis is required.
- (9) Testing for n-hexane is required when VPH analysis is performed for Method B or C. In this case, the concentration of n-hexane should be deleted from its respective fraction to avoid double-counting its concentration. n-Hexane's contribution to overall toxicity is then evaluated using its own reference dose.
- (10) Volatile fuel additives (such as dibromoethane, 1 - 2 (EDB) (CAS# 106-93-4) and dichloroethane, 1 - 2 (EDC) (CAS# 107-06-2)) must be part of a volatile organics analysis (VOA) of GRO contaminated groundwater. If any is found in groundwater, then the contaminated soil must also be tested for these chemicals.
- (11) Methyl tertiary-butyl ether (MTBE) (CAS# 1634-04-4) must be analyzed in GRO contaminated groundwater. If any is found in groundwater, then the contaminated soil must also be tested for MTBE.
- (12) For automotive gasoline where the release occurred prior to 1996 (when "leaded gasoline" was used), testing for lead is
 - (a) required unless it can be demonstrated that lead was not part of the release. If this demonstration cannot be made, testing is required in a sufficient number of samples to determine whether lead is present at concentrations of concern. Other additives and blending compounds of potential environmental significance may need to be considered for testing, including: tertiary-butyl alcohol (TBA); tertiary-amyl methyl ether (TAME); ethyl tertiary-butyl ether (ETBE); ethanol; and methanol. Contact the department for additional testing recommendations regarding these and other additives and blending compounds.
 - (b) For aviation gasoline, racing fuels and similar products, testing is required for likely fuel additives (especially lead) and likely blending compounds, no matter when the release occurred.

- (13)** Testing for carcinogenic PAHs is required for DRO and heavy oils, except for the following products for which adequate information exists to indicate their absence: Diesel No. 1 and 2, home heating oil, kerosene, jet fuels, and electrical insulating mineral oils. The carcinogenic PAHs include benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, benzo(k)fluoranthene, benzo(a)anthracene, and benzo(b)fluoranthene.
- (14)(a)** Except as noted in (b) and (c), testing for the noncarcinogenic PAHs, including the "naphthalenes" (naphthalene, 1-methyl-naphthalene, and 2-methyl-naphthalene) is not required when using Method A cleanup levels, because they are included in the TPH cleanup level.

 - (b)** Testing of soil for naphthalenes is required under Methods B and C when the inhalation exposure pathway is evaluated.
 - (c)** If naphthalenes are found in groundwater, then the soil must also be tested for naphthalenes.
- (15)** Testing for PCBs is required unless it can be demonstrated that: (1) The release originated from an electrical device manufactured for use in the United States after July 1, 1979; (2) oil containing PCBs was never used in the equipment suspected as the source of the release (examples of equipment where PCBs are likely to be found include transformers, electric motors, hydraulic systems, heat transfer systems, electromagnets, compressors, capacitors, switches and miscellaneous other electrical devices); or, (3) the oil released was recently tested and did not contain PCBs.
- (16)** Testing for other possible chemical contaminants may be required based on site-specific information.
- (17)** The analytical methods NWTPH-Gx, NWTPH-Dx, NWTPH-HCID, VPH, and EPH are methods published by the department of ecology and available on the department's internet website: <http://www.ecy.wa.gov/programs/tcp/cleanup.html>.

**Hazardous Waste Cleanup
Model Toxics Control Act
Chapter 70A.305 RCW**

Hazardous Waste Cleanup – Model Toxics Control Act Chapter 70A.305 RCW

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RCW 70A.305.010 Declaration of policy.

- (1) Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to preserve and enhance that right. The beneficial stewardship of the land, air, and waters of the state is a solemn obligation of the present generation for the benefit of future generations.
- (2) A healthful environment is now threatened by the irresponsible use and disposal of hazardous substances. There are hundreds of hazardous waste sites in this state, and more will be created if current waste practices continue. Hazardous waste sites threaten the state's water resources, including those used for public drinking water. Many of our municipal landfills are current or potential hazardous waste sites and present serious threats to human health and environment. The costs of eliminating these threats in many cases are beyond the financial means of our local governments and ratepayers. The main purpose of chapter 2, Laws of 1989 is to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's land and waters.
- (3) Many farmers and small business owners who have followed the law with respect to their uses of pesticides and other chemicals nonetheless may face devastating economic consequences because their uses have contaminated the environment or the water supplies of their neighbors. With a source of funds, the state may assist these farmers and business owners, as well as those persons who sustain damages, such as the loss of their drinking water supplies, as a result of the contamination.
- (4) It is in the public's interest to efficiently use our finite land base, to integrate our land use planning policies with our clean-up policies, and to clean up and reuse contaminated industrial properties in order to minimize industrial development pressures on undeveloped land and to make clean land available for future social use.
- (5) Because it is often difficult or impossible to allocate responsibility among persons liable for hazardous waste sites and because it is essential that sites be cleaned up well and expeditiously, each responsible person should be liable jointly and severally.
- (6) Because releases of hazardous substances can adversely affect the health and welfare of the public, the environment, and property values, it is in the public interest that affected communities be notified of where releases of hazardous substances have occurred and what is being done to clean them up.

[[2002 c 288 § 1](#); [1994 c 254 § 1](#); [1989 c 2 § 1](#) (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW [70.105D.010](#).]

NOTES:

Severability—2002 c 288: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [[2002 c 288 § 5](#).]

RCW 70A.305.020 Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) **"Agreed order"** means an order issued by the department under this chapter with which the potentially liable person or prospective purchaser receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW [70A.305.040](#)(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW [70A.305.190](#)(4)(a) (v) and (vi).
- (2) **"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.
- (3) **"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.
- (4) **"City"** means a city or town.
- (5) **"Department"** means the department of ecology.
- (6) **"Director"** means the director of ecology or the director's designee.
- (7) **"Environmental covenant"** has the same meaning as defined in RCW [64.70.020](#).
- (8) **"Facility"** means (a) 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 (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.
- (9) **"Federal cleanup law"** means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.
- (10)(a) **"Fiduciary"** means a person acting for the benefit of another party as a bona fide trustee; executor; administrator; custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated persons; trustee in bankruptcy; trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender.

Except as provided in subsection (22)(b)(iii) of this section, the liability of a fiduciary under this chapter shall not exceed the assets held in the fiduciary capacity.

(b) "Fiduciary" does not mean:

- (i)** A person acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person;
- (ii)** A person who acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or any other person. It is prima facie evidence that the fiduciary acquired ownership or control of the facility to avoid liability if the facility is the only substantial asset in the fiduciary estate at the time the facility became subject to the fiduciary estate;
- (iii)** A person who acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity directly or indirectly benefits from a trust or fiduciary relationship;
- (iv)** A person who is a beneficiary and fiduciary with respect to the same fiduciary estate, and who while acting as a fiduciary receives benefits that exceed customary or reasonable compensation, and incidental benefits permitted under applicable law;
- (v)** A person who is a fiduciary and receives benefits that substantially exceed customary or reasonable compensation, and incidental benefits permitted under applicable law; or
- (vi)** A person who acts in the capacity of trustee of state or federal lands or resources.

(11) "Fiduciary capacity" means the capacity of a person holding title to a facility, or otherwise having control of an interest in the facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(12) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(13) "Hazardous substance" means:

- (a)** Any dangerous or extremely hazardous waste as defined in RCW [70A.300.010](#)(1) and (7), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter [70A.300](#) RCW;

- (b) Any hazardous substance as defined in RCW [70A.300.010](#)(10) or any hazardous substance as defined by rule pursuant to chapter [70A.300](#) RCW;
- (c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);
- (d) Petroleum or petroleum products; and
- (e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

- (14) **"Holder"** means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.
- (15) **"Independent remedial actions"** means remedial actions conducted without department oversight or approval, and not under an order, agreed order, or consent decree.
- (16) **"Indicia of ownership"** means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.
- (17) **"Industrial properties"** means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:
 - (a) Zoned for industrial use by a city or county conducting land use planning under chapter [36.70A](#) RCW; or

- (b) For counties not planning under chapter [36.70A](#) RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.
- (18) **"Institutional controls"** means measures undertaken to limit or prohibit activities that may interfere with the integrity of a remedial action or result in exposure to or migration of hazardous substances at a site. "Institutional controls" include environmental covenants.
- (19) **"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 [70A.305.160](#).
- (20) **"Model remedy" or "model remedial action"** means a set of technologies, procedures, and monitoring protocols identified by the department for use in routine types of clean-up projects at facilities that have common features and lower risk to human health and the environment.
- (21) **"Operating a facility primarily to protect a security interest"** occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.
- (22) **"Owner or operator"** means:
 - (a) Any person with any ownership interest in the facility or who exercises any control over the facility; or
 - (b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;The term does not include:
 - (i) An agency of the state or unit of local government which acquired ownership or control through a drug forfeiture action under RCW [69.50.505](#), or involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility;
 - (ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (23)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

- (A) The holder properly maintains the environmental compliance measures already in place at the facility;
 - (B) The holder complies with the reporting requirements in the rules adopted under this chapter;
 - (C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;
 - (D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;
 - (E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and
 - (F) The holder does not exacerbate an existing release. The exemption in this subsection (22)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW [70A.305.040](#)(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;
- (iii) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a nonemployee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:
 - (A) The fiduciary properly maintains the environmental compliance measures already in place at the facility;
 - (B) The fiduciary complies with the reporting requirements in the rules adopted under this chapter;

- (C) The fiduciary complies with any order issued to the fiduciary by the department to abate an imminent or substantial endangerment;
- (D) The fiduciary allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;
- (E) Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and
- (F) The fiduciary does not exacerbate an existing release.

The exemption in this subsection (22)(b)(iii) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under RCW [70A.305.040](#)(1)(b), (c), (d), and (e); provided however, that a fiduciary shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release. The exemption in this subsection (22)(b)(iii) also does not apply where the fiduciary's powers to comply with this subsection (22)(b)(iii) are limited by a governing instrument created with the objective purpose of avoiding liability under this chapter or of avoiding compliance with this chapter; or

- (iv) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the groundwater from a source off the property, if:
 - (A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;
 - (B) The person has not caused or contributed to the release of the hazardous substance;
 - (C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated groundwater that has migrated onto the property;

- (D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and
- (E) Legal withdrawal of groundwater does not disqualify a person from the exemption in this subsection (22)(b)(iv).

(23) **"Participation in management"** means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(24) **"Person"** means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(25) **"Policing activities"** means actions the holder takes to ensure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security

interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

- (26) **"Potentially liable person"** means any person whom the department finds, based on credible evidence, to be liable under RCW [70A.305.040](#). The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.
- (27) **"Prepare a facility for sale, transfer, or assignment"** means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to cleanup releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (22)(b)(ii) of this section.
- (28) **"Primarily to protect a security interest"** means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.
- (29) **"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.
- (30) **"Public notice"** means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.
- (31) **"Redevelopment opportunity zone"** means a geographic area designated under RCW [70A.305.150](#).
- (32) **"Release"** means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.
- (33) **"Remedy" or "remedial action"** means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential 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.

- (34) **"Security interest"** means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.
- (35) **"Workout activities"** means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

[[2020 c 20 § 1306](#). Prior: [2013 2nd sp.s. c 1 § 2](#); [2007 c 104 § 18](#); [2005 c 191 § 1](#); [1998 c 6 § 1](#); [1997 c 406 § 2](#); [1995 c 70 § 1](#); [1994 c 254 § 2](#); [1989 c 2 § 2](#) (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW [70.105D.020](#).]

NOTES:

Findings—Intent—2013 2nd sp.s. c 1: "The legislature finds that there are a large number of toxic waste sites that have been identified in the department of ecology's priority list as ready for immediate cleanup. The legislature further finds that addressing the cleanup of these toxic waste sites will provide needed jobs to citizens of Washington state. It is the intent of the legislature to prioritize the spending of revenues under chapter [70.105D](#) RCW, the model toxics control act, on cleaning up the most toxic sites, while also providing jobs in communities around the state." [[2013 2nd sp.s. c 1 § 1](#).]

Effective date—2013 2nd sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [[2013 2nd sp.s. c 1 § 20](#).]

Application—Construction—2007 c 104: See RCW [64.70.015](#).

RCW 70A.305.030 Department's powers and duties.

- (1) The department may exercise the following powers in addition to any other powers granted by law:
- (a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;
 - (b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department must give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department must give preference to permanent solutions to the maximum extent practicable and must provide for or require adequate monitoring to ensure the effectiveness of the remedial action;
 - (c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or willful misconduct;
 - (d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;
 - (e) Classify substances as hazardous substances for purposes of RCW [70A.305.020](#) and classify substances and products as hazardous substances for purposes of RCW [82.21.020](#)(1);
 - (f) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under RCW [70A.305.170](#) that may be conditioned upon, environmental covenants where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing an environmental covenant under this subsection, the department must consult with and seek comment from a city or county department with land use planning authority for real property subject to the environmental covenant;
 - (g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment and the notification requirements established in RCW [70A.305.110](#), and impose penalties for violations of that section consistent with RCW [70A.305.050](#);

- (h)** Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW [70A.305.020\(22\)\(b\)\(ii\)\(C\)](#);
 - (i)** In fulfilling the objectives of this chapter, the department must allocate staffing and financial assistance in a manner that considers both the reduction of human and environmental risks and the land reuse potential and planning for the facilities to be cleaned up. This does not preclude the department from allocating resources to a facility based solely on human or environmental risks;
 - (j)** Establish model remedies for common categories of facilities, types of hazardous substances, types of media, or geographic areas to streamline and accelerate the selection of remedies for routine types of cleanups at facilities;

 - (i)** When establishing a model remedy, the department must:

 - (A)** Identify the requirements for characterizing a facility to select a model remedy, the applicability of the model remedy for use at a facility, and monitoring requirements;
 - (B)** Describe how the model remedy meets clean-up standards and the requirements for selecting a remedy established by the department under this chapter; and
 - (C)** Provide public notice and an opportunity to comment on the proposed model remedy and the conditions under which it may be used at a facility;
 - (ii)** When developing model remedies, the department must solicit and consider proposals from qualified persons. The proposals must, in addition to describing the model remedy, provide the information required under (j)(i)(A) and (B) of this subsection;
 - (iii)** If a facility meets the requirements for use of a model remedy, an analysis of the feasibility of alternative remedies is not required under this chapter. For department-conducted and department-supervised remedial actions, the department must provide public notice and consider public comments on the proposed use of a model remedy at a facility; and
 - (k)** Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter [34.05](#) RCW.
- (2)** The department must immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department must adopt, and thereafter enforce, rules under chapter [34.05](#) RCW to:
- (a)** Provide for public participation, including at least (i) public notice of the development of investigative plans or remedial plans for releases or threatened releases and (ii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

- (b)** Establish a hazard ranking system for hazardous waste sites;
 - (c)** Provide for requiring the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to human health or the environment within ninety days of discovery, including such exemptions from reporting as the department deems appropriate, however this requirement may not modify any existing requirements provided for under other laws;
 - (d)** Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives notice or otherwise receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;
 - (e)** Publish and periodically update minimum clean-up standards for remedial actions at least as stringent as the clean-up standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and
 - (f)** Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection must ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.
- (3)** To achieve and protect the state's long-term ecological health, the department must plan to clean up hazardous waste sites and prevent the creation of future hazards due to improper disposal of toxic wastes at a pace that matches the estimated cash resources in the model toxics control capital account. Estimated cash resources must consider the annual cash flow requirements of major projects that receive appropriations expected to cross multiple biennia.
- (4)** Before September 20th of each even-numbered year, the department must:
 - (a)** Develop a comprehensive ten-year financing report in coordination with all local governments with clean-up responsibilities that identifies the projected biennial hazardous waste site remedial action needs that are eligible for funding from the model toxics control capital account;
 - (b)** Work with local governments to develop working capital reserves to be incorporated in the ten-year financing report;
 - (c)** Identify the projected remedial action needs for orphaned, abandoned, and other clean-up sites that are eligible for funding from the model toxics control capital account;
 - (d)** Project the remedial action need, cost, revenue, and any recommended working capital reserve estimate to the next biennium's long-term remedial action needs from the model toxics control capital account, and submit this information to the appropriate

standing fiscal and environmental committees of the senate and house of representatives. This submittal must also include a ranked list of such remedial action projects for the model toxics control capital account. The submittal must also identify separate budget estimates for large, multiyear clean-up projects that exceed ten million dollars. The department must prepare its ten-year capital budget plan that is submitted to the office of financial management to reflect the separate budget estimates for these large clean-up projects and include information on the anticipated private and public funding obligations for completion of the relevant projects.

- (5)** By December 1st of each odd-numbered year, the department must provide the legislature and the public a report of the department's activities supported by appropriations from the model toxics control operating, capital, and stormwater accounts. The report must be prepared and displayed in a manner that allows the legislature and the public to easily determine the statewide and local progress made in cleaning up hazardous waste sites under this chapter. The report must include, at a minimum:
- (a)** The name, location, hazardous waste ranking, and a short description of each site on the hazardous sites list, and the date the site was placed on the hazardous waste sites list; and
 - (b)** For sites where there are state contracts, grants, loans, or direct investments by the state:
 - (i)** The amount of money from the model toxics control capital account used to conduct remedial actions at the site and the amount of that money recovered from potentially liable persons;
 - (ii)** The actual or estimated start and end dates and the actual or estimated expenditures of funds authorized under this chapter for the following project phases:
 - (A)** Emergency or interim actions, if needed;
 - (B)** Remedial investigation;
 - (C)** Feasibility study and selection of a remedy;
 - (D)** Engineering design and construction of the selected remedy;
 - (E)** Operation and maintenance or monitoring of the constructed remedy; and
 - (F)** The final completion date.
- (6)** The department must establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.
- (7)** For all facilities where an environmental covenant has been required under subsection (1)(f) of this section, including all facilities where the department has required an environmental covenant under an order, agreed order, or consent decree, or as a condition of a written opinion

issued under the authority of RCW [70A.305.170](#), the department must periodically review the environmental covenant for effectiveness. The department must conduct a review at least once every five years after an environmental covenant is recorded.

- (a) The review must consist of, at a minimum:
 - (i) A review of the title of the real property subject to the environmental covenant to determine whether the environmental covenant was properly recorded and, if applicable, amended or terminated;
 - (ii) A physical inspection of the real property subject to the environmental covenant to determine compliance with the environmental covenant, including whether any development or redevelopment of the real property has violated the terms of the environmental covenant; and
 - (iii) A review of the effectiveness of the environmental covenant in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances. This must include a review of available monitoring data.
- (b) If an environmental covenant has been amended or terminated without proper authority, or if the terms of an environmental covenant have been violated, or if the environmental covenant is no longer effective in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances, then the department must take any and all appropriate actions necessary to ensure compliance with the environmental covenant and the policies and requirements of this chapter.

[[2020 c 20 § 1307](#); [2020 c 18 § 5](#). Prior: [2019 c 422 § 401](#); [2019 c 95 § 3](#); [2013 2nd sp.s. c 1 § 6](#); [2009 c 560 § 10](#); prior: [2007 c 446 § 1](#); [2007 c 225 § 1](#); [2007 c 104 § 19](#); [2002 c 288 § 3](#); [2001 c 291 § 401](#); [1997 c 406 § 3](#); [1995 c 70 § 2](#); prior: [1994 c 257 § 11](#); [1994 c 254 § 3](#); [1989 c 2 § 3](#) (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW [70.105D.030](#).]

NOTES:

Reviser's note: This section was amended by 2020 c 18 § 5 and by 2020 c 20 § 1307, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW [1.12.025](#)(2). For rule of construction, see RCW [1.12.025](#)(1).

Explanatory statement—2020 c 18: See note following RCW [43.79A.040](#).

Effective date—Intent—2019 c 422: See notes following RCW [82.21.010](#).

Intent—2019 c 95: See note following RCW [70A.305.170](#).

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW [70A.305.020](#).

Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560: See notes following RCW [18.06.080](#).

Application—Construction—2007 c 104: See RCW [64.70.015](#).

Effective date—2002 c 288 §§ 2-4: See note following RCW [70A.305.110](#).

Severability—2002 c 288: See note following RCW [70A.305.010](#).

Part headings not law—Effective date—2001 c 291: See notes following RCW [43.20A.360](#).

Severability—1994 c 257: See note following RCW [36.70A.270](#).

RCW 70A.305.040 Standard of liability–Settlement.

- (1)** Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

 - (a)** The owner or operator of the facility;
 - (b)** Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;
 - (c)** Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;
 - (d)** Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter [70A.300](#) RCW; and
 - (e)** Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.
- (2)** Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, is empowered to recover all costs and damages from persons liable therefor.
- (3)** The following persons are not liable under this section:

 - (a)** Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

 - (i)** An act of God;
 - (ii)** An act of war; or
 - (iii)** An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

- (b)** Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (3)(b) is limited as follows:

 - (i)** To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this subsection (3)(b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;
 - (ii)** The defense contained in this subsection (3)(b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;
 - (iii)** The defense contained in this subsection (3)(b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;
- (c)** Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the substance; or (iii) a person who is employed by the resident, but who is not an independent contractor;
- (d)** Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations.
- (4)** There may be no settlement by the state with any person potentially liable under this chapter except in accordance with this section.

 - (a)** The attorney general may agree to a settlement with any potentially liable person only if the department finds, after public notice and any required hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with clean-up standards under RCW [70A.305.030\(2\)\(e\)](#) and with any remedial orders issued by the department. Whenever practicable and in the public interest, the attorney general may expedite such a settlement with persons whose

contribution is insignificant in amount and toxicity. A hearing shall be required only if at least ten persons request one or if the department determines a hearing is necessary.

- (b)** A settlement agreement under this section shall be entered as a consent decree issued by a court of competent jurisdiction.
- (c)** A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the attorney general has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the court to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.
- (d)** A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the state by the amount of the settlement.
- (e)** If the state has entered into a consent decree with an owner or operator under this section, the state shall not enforce this chapter against any owner or operator who is a successor in interest to the settling party unless under the terms of the consent decree the state could enforce against the settling party, if:

 - (i)** The successor owner or operator is liable with respect to the facility solely due to that person's ownership interest or operator status acquired as a successor in interest to the owner or operator with whom the state has entered into a consent decree; and
 - (ii)** The stay of enforcement under this subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship. For consent decrees entered into before July 27, 1997, at the request of a settling party or a potential successor owner or operator, the attorney general shall issue a written opinion on whether a consent decree contains such unique circumstances. For all other consent decrees, such unique circumstances shall be specified in the consent decree.
- (f)** Any person who is not subject to enforcement by the state under (e) of this subsection is not liable for claims for contribution regarding matters addressed in the settlement.
- (5)(a)** In addition to the settlement authority provided under subsection (4) of this section, the attorney general may agree to a settlement with a prospective purchaser, provided that:

 - (i)** The settlement will yield substantial new resources to facilitate cleanup;
 - (ii)** The settlement will expedite remedial action at the facility consistent with the rules adopted under this chapter; and

- (iii) Based on available information, the department determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the facility, or increase health risks to persons at or in the vicinity of the facility.
 - (b) The legislature recognizes that the state does not have adequate resources to participate in all property transactions involving contaminated property. The primary purpose of this subsection (5) is to promote the cleanup and reuse of brownfield property. The attorney general and the department may give priority to settlements that will provide a substantial public benefit in addition to cleanup.
 - (c) A settlement entered under this subsection is governed by subsection (4) of this section.
 - (6) As an alternative to a settlement under subsection (5) of this section, the department may enter into an agreed order with a prospective purchaser of a property within a designated redevelopment opportunity zone. The agreed order is subject to the limitations in RCW [70A.305.020](#)(1), but stays enforcement by the department under this chapter regarding remedial actions required by the agreed order as long as the prospective purchaser complies with the requirements of the agreed order.
 - (7) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes.
- [[2020 c 20 § 1308](#); [2013 2nd sp.s. c 1 § 7](#); [1997 c 406 § 4](#); [1994 c 254 § 4](#); [1989 c 2 § 4](#) (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW [70.105D.040](#).]

NOTES:

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW [70A.305.020](#).

RCW 70A.305.050 Enforcement.

- (1)** With respect to any release, or threatened release, for which the department does not conduct or contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director must issue orders or agreed orders requiring potentially liable persons to provide the remedial action. Any liable person, or prospective purchaser who has entered into an agreed order under RCW [70A.305.040](#)(6), who refuses, without sufficient cause, to comply with an order or agreed order of the director is liable in an action brought by the attorney general for:

 - (a)** Up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and
 - (b)** A civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply.

The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after March 1, 1989.
- (2)** Any person who incurs costs complying with an order issued under subsection (1) of this section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit and recover costs by proving that he or she was not a liable person under RCW [70A.305.040](#) and that the costs incurred were reasonable.
- (3)** The attorney general must seek, by filing an action if necessary, to recover the amounts spent by the department for investigative and remedial actions and orders, and agreed orders, including amounts spent prior to March 1, 1989.
- (4)** The attorney general may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.
- (5)(a)** Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment exists. The court may award attorneys' fees and other costs to the prevailing party in the action.

 - (b)** Civil actions under this section and RCW [70A.305.070](#) may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists.
- (6)** Any person who fails to provide notification of releases consistent with RCW [70A.305.110](#) or who submits false information is liable in an action brought by the attorney general for a civil penalty of up to five thousand dollars per day for each day the party refuses to comply.
- (7)** Any person who owns real property or lender holding a mortgage on real property that is subject to a lien filed under RCW [70A.305.060](#) may petition the department to have the lien removed or the amount of the lien reduced. If, after consideration of the petition and the information supporting the petition, the department decides to deny the request, the person may, within ninety days after receipt of the department's denial, file suit for removal or

reduction of the lien. The person is entitled to removal of a lien filed under RCW [70A.305.060](#)(2)(a) if they can prove by a preponderance of the evidence that the person is not a liable party under RCW [70A.305.040](#). The person is entitled to a reduction of the amount of the lien if they can prove by a preponderance of the evidence:

- (a) For liens filed under RCW [70A.305.060](#)(2)(a), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property; and
 - (b) For liens filed under RCW [70A.305.060](#)(2)(c), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property or exceeds the increase of the fair market value of the real property solely attributable to the remedial action conducted by the department.
- (8) The expenditure of moneys under the model toxics control operating, capital, and stormwater accounts created in RCW [70A.305.180](#) through [70A.305.200](#) does not alter the liability of any person under this chapter, or the authority of the department under this chapter, including the authority to recover those moneys.

[[2020 c 20 § 1309](#); [2019 c 422 § 402](#); [2013 2nd sp.s. c 1 § 8](#); [2005 c 211 § 2](#); [2002 c 288 § 4](#); [1994 c 257 § 12](#); [1989 c 2 § 5](#) (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW [70.105D.050](#).]

NOTES:

Effective date—Intent—2019 c 422: See notes following RCW [82.21.010](#).

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW [70A.305.020](#).

Effective date—2002 c 288 §§ 2-4: See note following RCW [70A.305.110](#).

Severability—2002 c 288: See note following RCW [70A.305.010](#).

Severability—1994 c 257: See note following RCW [36.70A.270](#).

RCW 70A.305.060 Lien authority.

- (1)** It is in the public interest for the department to recover remedial action costs incurred in discharging its responsibility under this chapter, as these recovered funds can then be applied to the cleanup of other facilities. Thus, in addition to other cost-recovery mechanisms provided under this chapter, this section is intended to facilitate the recovery of state funds spent on remedial actions by providing the department with lien authority. This will also prevent a facility owner or mortgagee from gaining a financial windfall from increased land value resulting from department-conducted remedial actions at the expense of the state taxpayers.
- (2)** If the state of Washington incurs remedial action costs relating to a remedial action of real property, and those remedial action costs are unrecovered by the state of Washington, the department may file a lien against that real property.

 - (a)** Except as provided in (c) of this subsection, liens filed under this section shall have priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded, except for the following liens:

 - (i)** Local and special district property tax assessments; and
 - (ii)** Mortgage liens recorded before liens or notices of intent to conduct remedial actions are recorded under this section.
 - (b)** Liens filed pursuant to (a) and (c) of this subsection shall not exceed the remedial action costs incurred by the state.
 - (c)(i)** If the real property for which the department has incurred remedial action costs is abandoned, the department may choose to limit the amount of the lien to the increase in the fair market value of the real property that is attributable to a remedial action conducted by the department. The increase in fair market value shall be determined by subtracting the county assessor's value of the real property for the most recent year prior to remedial action being initiated from the value of the real property after remedial action. The value of the real property after remedial action shall be determined by the bona fide purchase price of the real property or by a real estate appraiser retained by the department. Liens limited in this way have priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded.

 - (ii)** For the purposes of this subsection, "abandoned" means there has not been significant business activity on the real property for three years or property taxes owed on the real property are three years in arrears prior to the department incurring costs attributable to this lien.
 - (d)** The department shall, when notifying potentially liable persons of their potential liability under RCW [70A.305.040](#), include a notice stating that if the department incurs remedial action costs relating to the remediation of real property and the costs are not recovered by the department, the department may file a lien against that real property under this section.

(e) Except for emergency remedial actions, the department must provide notice to the following persons before initiating remedial actions conducted by persons under contract to the department on real property on which a lien may be filed under this section:

- (i)** The real property owner;
- (ii)** Mortgagees;
- (iii)** Lienholders of record;
- (iv)** Persons known to the department to be conducting remedial actions at the facility at the time of such notice; and
- (v)** Persons known to the department to be under contract to conduct remedial actions at the facility at the time of such notice.

For emergency remedial actions, this notice shall be provided within thirty days after initiation of the emergency remedial actions.

(f) The department may record a copy of the notice in (e) of this subsection, along with a legal description of the property on which the remedial action will take place, with the county auditor in the county where the real property is located. If the department subsequently files a lien, the effective date of the lien will be the date this notice was recorded.

(3) Before filing a lien under this section, the department shall give the owner of real property on which the lien is to be filed and mortgagees and lienholders of record a notice of its intent to file a lien:

(a) The notice required under this subsection (3) must be sent by certified mail to the real property owner and mortgagees of record at the addresses listed in the recorded documents. If the real property owner is unknown or if a mailed notice is returned as undeliverable, the department shall provide notice by posting a legal notice in the newspaper of largest circulation in the county in which the site is located. The notice shall provide:

- (i)** A statement of the purpose of the lien;
- (ii)** A brief description of the real property to be affected by the lien;
- (iii)** A statement of the remedial action costs incurred by the state related to the real property affected by the lien;
- (iv)** A brief statement of facts showing probable cause that the real property is the subject of the remedial action costs incurred by the department; and
- (v)** The time period following service or other notice during which any recipient of the notice whose legal rights may be affected by the lien may comment on the notice.

- (b) Any comments on the notice must be received by the department on or before thirty days following service or other provision of the notice of intent to file a lien.
- (c) If no comments are received by the department, the lien may be filed on the real property immediately.
- (d) If the department receives any comments on the lien, the department shall determine if there is probable cause for filing the certificate of lien. If the department determines there is probable cause, the department may file the lien. Any further challenge to the lien may only occur at the times specified under RCW [70A.305.070](#).
- (e) If the department has reason to believe that exigent circumstances require the filing of a lien prior to giving notice under this subsection (3), or prior to the expiration of the time period for comments, the department may file the lien immediately. For the purposes of this subsection (3), exigent circumstances include, but are not limited to, an imminent bankruptcy filing by the real property owner, or the imminent transfer or sale of the real property subject to lien by the real property owner, or both.
- (4) A lien filed under this section is effective when a statement of lien is filed with the county auditor in the county where the real property is located. The statement of lien must include a description of the real property subject to lien and the amount of the lien.
- (5) Unless the department determines it is in the public interest to remove the lien, the lien continues until the liability for the remedial action costs have been satisfied through sale of the real property, foreclosure, or other means agreed to by the department. Any action for foreclosure of the lien shall be brought by the attorney general in a civil action in the court having jurisdiction and in the manner prescribed for the judicial foreclosure of a mortgage.
- (6)(a) This section does not apply to real property owned by a local government or special purpose district or real property used solely for residential purposes and consisting of four residential units or less at the time the lien is recorded. This limitation does not apply to illegal drug manufacturing and storage sites under chapter [64.44](#) RCW.

 - (b) If the real property owner has consented to the department filing a lien on the real property, then only subsection (3)(a)(i) through (iii) of this section requiring notice to mortgagees and lienholders of record apply.

[[2020 c 20 § 1310](#); [2005 c 211 § 1](#). Formerly RCW [70.105D.055](#).]

RCW 70A.305.070 Timing of review.

The department's investigative and remedial decisions under RCW [70A.305.030](#) and [70A.305.050](#), its decisions regarding filing a lien under RCW [70A.305.060](#), and its decisions regarding liable persons under RCW [70A.305.020](#), [70A.305.040](#), [70A.305.050](#), and [70A.305.060](#) shall be reviewable exclusively in superior court and only at the following times: (1) In a cost recovery suit under RCW [70A.305.050](#)(3); (2) in a suit by the department to enforce an order or an agreed order, or seek a civil penalty under this chapter; (3) in a suit for reimbursement under RCW [70A.305.050](#)(2); (4) in a suit by the department to compel investigative or remedial action; (5) in a citizen's suit under RCW [70A.305.050](#)(5); and (6) in a suit for removal or reduction of a lien under RCW [70A.305.050](#)(7). Except in suits for reduction or removal of a lien under RCW [70A.305.050](#)(7), the court shall uphold the department's actions unless they were arbitrary and capricious. In suits for reduction or removal of a lien under RCW [70A.305.050](#)(7), the court shall review such suits pursuant to the standards set forth in RCW [70A.305.050](#)(7).

[[2020 c 20 § 1311](#); [2007 c 104 § 20](#); [2005 c 211 § 3](#); [1994 c 257 § 13](#); [1989 c 2 § 6](#) (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW [70.105D.060](#).]

NOTES:

Application—Construction—2007 c 104: See RCW [64.70.015](#).

Severability—1994 c 257: See note following RCW [36.70A.270](#)

RCW 70A.305.080 Private right of action—Remedial action costs.

Except as provided in RCW [70A.305.040](#)(4)(d) and (f), a person may bring a private right of action, including a claim for contribution or for declaratory relief, against any other person liable under RCW [70A.305.040](#) for the recovery of remedial action costs. In the action, natural resource damages paid to the state under this chapter may also be recovered. Recovery shall be based on such equitable factors as the court determines are appropriate. Remedial action costs shall include reasonable attorneys' fees and expenses. Recovery of remedial action costs shall be limited to those remedial actions that, when evaluated as a whole, are the substantial equivalent of a department-conducted or department-supervised remedial action. Substantial equivalence shall be determined by the court with reference to the rules adopted by the department under this chapter. An action under this section may be brought after remedial action costs are incurred but must be brought within three years from the date remedial action confirms cleanup standards are met or within one year of May 12, 1993, whichever is later. The prevailing party in such an action shall recover its reasonable attorneys' fees and costs. This section applies to all causes of action regardless of when the cause of action may have arisen. To the extent a cause of action has arisen prior to May 12, 1993, this section applies retroactively, but in all other respects it applies prospectively.

[[2020 c 20 § 1312](#); [1997 c 406 § 6](#); [1993 c 326 § 1](#). Formerly RCW [70.105D.080](#).]

NOTES:

Effective date—1993 c 326: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [[1993 c 326 § 2](#).]

Severability—1993 c 326: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [[1993 c 326 § 3](#).]

RCW 70A.305.090 Remedial action—Exemption from procedural requirements.

- (1) A person conducting a remedial action at a facility under a consent decree, order, or agreed order, and the department when it conducts a remedial action, are exempt from the procedural requirements of chapters [70A.15](#), [70A.205](#), [70A.300](#), [77.55](#), [90.48](#), and [90.58](#) RCW, and the procedural requirements of any laws requiring or authorizing local government permits or approvals for the remedial action. The department shall ensure compliance with the substantive provisions of chapters [70A.15](#), [70A.205](#), [70A.300](#), [77.55](#), [90.48](#), and [90.58](#) RCW, and the substantive provisions of any laws requiring or authorizing local government permits of approvals. The department shall establish procedures for ensuring that such remedial actions comply with the substantive requirements adopted pursuant to such laws, and shall consult with the state agencies and local governments charged with implementing these laws. The procedures shall provide an opportunity for comment by the public and by the state agencies and local governments that would otherwise implement the laws referenced in this section. Nothing in this section is intended to prohibit implementing agencies from charging a fee to the person conducting the remedial action to defray the costs of services rendered relating to the substantive requirements for the remedial action.
- (2) An exemption in this section or in RCW [70A.15.3020](#), [70A.205.235](#), [70A.300.200](#), [77.55.061](#), [90.48.039](#), and [90.58.355](#) shall not apply if the department determines that the exemption would result in loss of approval from a federal agency necessary for the state to administer any federal law, including the federal resource conservation and recovery act, the federal clean water act, the federal clean air act, and the federal coastal zone management act. Such a determination by the department shall not affect the applicability of the exemptions to other statutes specified in this section.

[[2020 c 20 § 1313](#); [2003 c 39 § 30](#); [1994 c 257 § 14](#). Formerly RCW [70.105D.090](#).]

NOTES:

Severability—1994 c 257: See note following RCW [36.70A.270](#).

**RCW 70A.305.100 Grants to local governments—Statement of environmental benefits—
Development of outcome-focused performance measures.**

In providing grants to local governments, the department shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the department shall utilize the statement of environmental benefit[s] in its prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW [43.41.270](#). The department shall consult with affected interest groups in implementing this section.

[[2001 c 227 § 5](#). Formerly RCW [70.105D.100](#).]

NOTES:

Findings—Intent—2001 c 227: See note following RCW [43.41.270](#).

RCW 70A.305.110 Releases of hazardous substances—Notice—Exemptions.

- (1)** Except as provided in subsection (5) of this section, any owner or operator of a facility that is actively transitioning from operating under a federal permit for treatment, storage, or disposal of hazardous waste issued under 42 U.S.C. Sec. 6925 to operating under the provisions of this chapter, who has information that a hazardous substance has been released to the environment at the owner or operator's facility that may be a threat to human health or the environment, shall issue a notice to the department within ninety days. The notice shall include a description of any remedial actions planned, completed, or underway.
- (2)** The notice must be posted in a visible, publicly accessible location on the facility, to remain in place until all remedial actions except confirmational monitoring are complete.
- (3)** After receiving the notice from the facility, the department must review the notice and mail a summary of its contents, along with any additional information deemed appropriate by the department, to:

 - (a)** Each residence and landowner of a residence whose property boundary is within three hundred feet of the boundary of the property where the release occurred or if the release occurred from a pipeline or other facility that does not have a property boundary, within three hundred feet of the actual release;
 - (b)** Each business and landowner of a business whose property boundary is within three hundred feet of the boundary of the property where the release occurred;
 - (c)** Each residence, landowner of a residence, and business with a property boundary within the area where hazardous substances have come to be located as a result of the release;
 - (d)** Neighborhood associations and community organizations representing an area within one mile of the facility and recognized by the city or county with jurisdiction within this area;
 - (e)** The city, county, and local health district with jurisdiction within the areas described in (a), (b), and (c) of this subsection; and
 - (f)** The department of health.
- (4)** A notice produced by a facility shall provide the following information:

 - (a)** The common name of any hazardous substances released and, if available, the chemical abstract service registry number of these substances;
 - (b)** The address of the facility where the release occurred;
 - (c)** The date the release was discovered;
 - (d)** The cause and date of the release, if known;
 - (e)** The remedial actions being taken or planned to address the release;

- (f) The potential health and environmental effects of the hazardous substances released; and
 - (g) The name, address, and telephone number of a contact person at the facility where the release occurred.
- (5) The following releases are exempt from the notification requirements in this section:
 - (a) Application of pesticides and fertilizers for their intended purposes and according to label instructions;
 - (b) The lawful and nonnegligent use of hazardous household substances by a natural person for personal or domestic purposes;
 - (c) The discharge of hazardous substances in compliance with permits issued under chapter [70A.15](#), 90.48, or [90.56](#) RCW;
 - (d) De minimis amounts of any hazardous substance leaked or discharged onto the ground;
 - (e) The discharge of hazardous substances to a permitted wastewater treatment facility or from a permitted wastewater collection system or treatment facility as allowed by a facility's discharge permit;
 - (f) Any releases originating from a single-family or multifamily residence, including but not limited to the discharge of oil from a residential home heating oil tank with the capacity of five hundred gallons or less;
 - (g) Any spill on a public road, street, or highway or to surface waters of the state that has previously been reported to the United States coast guard and the state division of emergency management under chapter [90.56](#) RCW;
 - (h) Any release of hazardous substances to the air;
 - (i) Any release that occurs on agricultural land, including land used to grow trees for the commercial production of wood or wood fiber, that is at least five acres in size, when the effects of the release do not come within three hundred feet of any property boundary. For the purposes of this subsection, agricultural land includes incidental uses that are compatible with agricultural or silvicultural purposes, including, but not limited to, land used for the housing of the owner, operator, or employees, structures used for the storage or repair of equipment, machinery, and chemicals, and any paths or roads on the land; and
 - (j) Releases that, before January 1, 2003, have been previously reported to the department, or remediated in compliance with a settlement agreement under RCW [70A.305.040](#)(4) or enforcement order or agreed order issued under this chapter or have been the subject of an opinion from the department under RCW [70A.305.170](#) that no further remedial action is required.

An exemption from the notification requirements of this section does not exempt the owner or operator of a facility from any other notification or reporting requirements, or imply a release from liability under this chapter.

- (6) If a significant segment of the community to be notified speaks a language other than English, an appropriate translation of the notice must also be posted and mailed to the department in accordance with the requirements of this section.
- (7) The facility where the release occurred is responsible for reimbursing the department within thirty days for the actual costs associated with the production and mailing of the notices under this section.

[[2020 c 20 § 1314](#); [2019 c 95 § 5](#); [2002 c 288 § 2](#). Formerly RCW [70A.305.170](#).]

NOTES:

Intent—2019 c 95: See note following RCW [70A.305.170](#).

Effective date—2002 c 288 §§ 2-4: "Sections 2 through 4 of this act take effect January 1, 2003."
[[2002 c 288 § 6](#).]

Severability—2002 c 288: See note following RCW [70A.305.010](#).

RCW 70A.305.120 Puget Sound partners.

When administering funds under this chapter, the department shall give preference only to Puget Sound partners, as defined in RCW [90.71.010](#), in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW [90.71.310](#), or for any other reason, shall not be given less preferential treatment than Puget Sound partners.

[[2007 c 341 § 31](#). Formerly RCW [70.105D.120](#).]

NOTES:

Effective date—2007 c 341: See RCW [90.71.907](#).

RCW 70A.305.130 Cleanup settlement account – Reporting requirements.

- (1)** The cleanup settlement account is created in the state treasury. The account is not intended to replace the model toxics control capital account established under RCW [70A.305.190](#). All receipts from the sources identified in subsection (2) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as identified in subsection (4) of this section.
- (2)** The following receipts must be deposited into the cleanup settlement account:

 - (a)** Receipts from settlements or court orders that direct payment to the account and resolve a person's liability or potential liability under this chapter for either or both of the following:

 - (i)** Conducting future remedial action at a specific facility, if it is not feasible to require the person to conduct the remedial action based on the person's financial insolvency, limited ability to pay, or insignificant contribution under RCW [70A.305.040](#)(4)(a);
 - (ii)** Assessing or addressing the injury to natural resources caused by the release of a hazardous substance from a specific facility; and
 - (b)** Receipts from investment of the moneys in the account.
- (3)** If a settlement or court order does not direct payment of receipts described in subsection (2)(a) of this section into the cleanup settlement account, then the receipts from any payment to the state must be deposited into the model toxics control capital account.
- (4)** Expenditures from the cleanup settlement account may only be used to conduct remedial actions at the specific facility or to assess or address the injury to natural resources caused by the release of hazardous substances from that facility for which the moneys were deposited in the account. Conducting remedial actions or assessing or addressing injury to natural resources includes direct expenditures and indirect expenditures such as department oversight costs. During the 2009-2011 fiscal biennium, the legislature may transfer excess fund balances in the account into the state efficiency and restructuring account. Transfers of excess fund balances made under this section may be made only to the extent amounts transferred with required repayments do not impair the ten-year spending plan administered by the department of ecology for environmental remedial actions dedicated for any designated clean-up site associated with the Everett smelter and Tacoma smelter, including plumes, or former Asarco mine sites. The cleanup settlement account must be repaid with interest under provisions of the state efficiency and restructuring account.
- (5)** The department must track moneys received, interest earned, and moneys expended separately for each facility.
- (6)** After the department determines that all remedial actions at a specific facility, and all actions assessing or addressing injury to natural resources caused by the release of hazardous substances from that facility, are completed, including payment of all related costs, any moneys

remaining for the specific facility must be transferred to the model toxics control capital account established under RCW [70A.305.190](#).

- (7) The department must provide the office of financial management and the fiscal committees of the legislature with a report by October 31st of each year regarding the activity within the cleanup settlement account during the previous fiscal year.

[[2020 c 20 § 1315](#); [2019 c 422 § 413](#); [2010 1st sp.s. c 37 § 947](#); [2008 c 106 § 1](#). Formerly RCW [70.105D.130](#).]

NOTES:

Effective date—Intent—2019 c 422: See notes following RCW [82.21.010](#).

Effective date—2010 1st sp.s. c 37: See note following RCW [13.06.050](#).

RCW 70A.305.140 Brownfield redevelopment trust fund account—Created—Report to the office of financial management and the legislature—Rules.

*** CHANGE IN 2024 *** (SEE [6098.SL](#)) ***

- (1) The brownfield redevelopment trust fund account is created in the state treasury. All receipts from the sources identified in subsection (2) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as identified in subsection (4) of this section.
- (2) The following receipts must be deposited into the brownfield redevelopment trust fund account:

 - (a) Moneys appropriated by the legislature to the account for a specific redevelopment opportunity zone established under RCW [70A.305.150](#) or a specific brownfield renewal authority established under RCW [70A.305.160](#);
 - (b) Moneys voluntarily deposited in the account for a specific redevelopment opportunity zone or a specific brownfield renewal authority; and
 - (c) Receipts from settlements or court orders that direct payment to the account for a specific redevelopment opportunity zone to resolve a person's liability or potential liability under this chapter.
- (3) If a settlement or court order does not direct payment of receipts described in subsection (2)(c) of this section into the brownfield redevelopment trust fund account, then the receipts from any payment to the state must be deposited into the model toxics control capital account established under RCW [70A.305.190](#).
- (4) Expenditures from the brownfield redevelopment trust fund account may only be used for the purposes of remediation and cleanup at the specific redevelopment opportunity zone or specific brownfield renewal authority for which the moneys were deposited in the account.
- (5) The department must track moneys received, interest earned, and moneys expended separately for each facility.
- (6) The account must retain its interest earnings in accordance with RCW [43.84.092](#).
- (7) The local government designating the redevelopment opportunity zone under RCW [70A.305.150](#) or the associated brownfield renewal authority created under RCW [70A.305.160](#) must be the beneficiary of the deposited moneys.
- (8) All expenditures must be used to conduct remediation and cleanup consistent with a plan for the remediation and cleanup of the properties or facilities approved by the department under this chapter. All expenditures must meet the eligibility requirements for the use by local governments under the rules for remedial action grants adopted by the department under this chapter, including requirements for the expenditure of nonstate match funding.
- (9) Beginning October 31, 2015, the department must provide a biennial report to the office of financial management and the legislature regarding the activity for each specific redevelopment

opportunity zone or specific brownfield renewal authority for which specific legislative appropriation was provided in the previous two fiscal years.

- (10) After the department determines that all remedial actions within the redevelopment opportunity zone identified in the plan approved under subsection (8) of this section are completed, including payment of all cost reasonably attributable to the remedial actions and cleanup, any remaining moneys must be transferred to the model toxics control capital account established under RCW [70A.305.190](#).
- (11) If the department determines that substantial progress has not been made on the plan approved under subsection (8) of this section for a redevelopment opportunity zone or specific brownfield renewal authority for which moneys were deposited in the account within six years, or that the brownfield renewal authority is no longer a viable entity, then all remaining moneys must be transferred to the model toxics control operating account established under RCW [70A.305.180](#).
- (12) The department is authorized to adopt rules to implement this section.

[[2020 c 20 § 1316](#); [2019 c 422 § 414](#); [2013 2nd sp.s. c 1 § 3](#). Formerly RCW [70.105D.140](#).]

NOTES:

Effective date—Intent—2019 c 422: See notes following RCW [82.21.010](#).

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW [70A.305.020](#).

RCW 70A.305.150 Designation of a redevelopment opportunity zone—Criteria.

- (1)** A city or county may designate a geographic area within its jurisdiction as a redevelopment opportunity zone if the zone meets the criteria in this subsection and the city or county adopts a resolution that includes the following determinations and commitments:

 - (a)** At least fifty percent of the upland properties in the zone are brownfield properties whether or not the properties are contiguous;
 - (b)** The upland portions of the zone are comprised entirely of parcels of property either owned by the city or county or whose owner has provided consent in writing to have their property included within the zone;
 - (c)** The cleanup of brownfield properties will be integrated with planning for the future uses of the properties and is consistent with the comprehensive land use plan for the zone; and
 - (d)** The proposed properties lie within the incorporated area of a city or within an urban growth area designated under RCW [36.70A.110](#).
- (2)** A port district may designate a redevelopment opportunity zone when:

 - (a)** The port district adopts a resolution that includes the determinations and commitments required under subsection (1)(a), (c), and (d) of this section and (c) of this subsection;
 - (b)** The zone meets the criteria in subsection (1)(a), (c), and (d) of this section; and
 - (c)** The port district either:

 - (i)** Owns in fee all of the upland properties within the zone; or
 - (ii)** Owns in fee at least fifty percent of the upland property in the zone, the owners of other parcels of upland property in the zone have provided consent in writing to have their property included in the zone, and the governing body of the city and county in which the zone lies approves of the designation by resolution.

[[2013 2nd sp.s. c 1 § 4](#). Formerly RCW [70.105D.150](#).]

NOTES:

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW [70A.305.020](#).

RCW 70A.305.160 Brownfield authority.

- (1)** A city, county, or port district may establish by resolution a brownfield renewal authority for the purpose of guiding and implementing the cleanup and reuse of properties within a designated redevelopment opportunity zone. Any combination of cities, counties, and port districts may establish a brownfield renewal authority through an interlocal agreement under chapter [39.34](#) RCW, and the brownfield renewal authority may exercise those powers as are authorized under chapter [39.34](#) RCW and under this chapter.
- (2)** A brownfield renewal authority must be governed by a board of directors selected as determined by the resolution or interlocal agreement establishing the authority.
- (3)** A brownfield renewal authority must be a separate legal entity and be deemed a municipal corporation. It has the power to: Sue and be sued; receive, account for, and disburse funds; employ personnel; and acquire or dispose of any interest in real or personal property within a redevelopment opportunity zone in the furtherance of the authority purposes. A brownfield renewal authority has the power to contract indebtedness and to issue and sell general obligation bonds pursuant to and in the manner provided for general county bonds in chapters [36.67](#) and [39.46](#) RCW and other applicable statutes, and to issue revenue bonds pursuant to and in the manner provided for revenue bonds in chapter [36.67](#) RCW and other applicable statutes.
- (4)** If the department determines that substantial progress has not been made on the plan approved under RCW [70A.305.140](#) by the brownfield renewal authority within six years of a city, county, or port district establishing a brownfield renewal authority, the department may require dissolution of the brownfield renewal authority. Upon dissolution of the brownfield renewal authority, except as provided in RCW [70A.305.140](#), all assets and liabilities transfer to the city, town, or port district establishing the brownfield renewal authority.

[[2020 c 20 § 1317](#); [2013 2nd sp.s. c 1 § 5](#). Formerly RCW [70.105D.160](#).]

NOTES:

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW [70A.305.020](#).

**RCW 70A.305.170 Establishment of program to provide informal advice and assistance—
Collection of costs—Expedited process—Rules—Voluntary cleanup account.**

- (1)** The department may establish a program to provide informal advice and assistance on the administrative and technical requirements of this chapter to persons who are conducting or otherwise interested in conducting independent remedial actions at facilities where there is a suspected or confirmed release of hazardous substances.

 - (a)** Any advice or assistance is advisory only and is not binding on the department.
 - (b)** As part of this advice and assistance, the department may provide written opinions on whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility.
 - (c)** Nothing in this chapter may be construed to preclude the department from issuing a written opinion on whether further remedial action is necessary at any portion of the real property located within a facility, even if further remedial action is still necessary elsewhere at the same facility. A written opinion on a portion of a facility must also provide an opinion on the status of the facility as a whole.
- (2)** The department may collect, from persons requesting advice and assistance under the program, all costs incurred by the department in providing advice and assistance.

 - (a)** To collect its costs, the department may use either a cost recovery structure or a fee structure, or both.

 - (i)** A fee structure may include either a single fee or a series of fees for individual services.
 - (ii)** The department may calculate fees based on the complexity of the contaminated site and other site-specific factors determined by the department.
 - (iii)** The department may establish a separate fee and cost recovery structure for providing expedited advice and assistance under subsection (3) of this section.
 - (b)** The department may waive collection of costs if the person requesting technical advice and assistance under the program commits to remediate contaminated real property for development of affordable housing, as determined by the department. Prior to waiving costs, the department must consider the requestor's ability to pay and the potential public benefit of the development. To ensure the real property is used for affordable housing, the department may file a lien against the real property pursuant to RCW [70A.305.060](#), require the person to record an interest in the real property in accordance with RCW [64.04.130](#), or use other means deemed by the department to be no less protective of the affordable housing use and the interests of the department.
 - (c)** Except when providing expedited advice and assistance under subsection (3) of this section, the department may also waive collection of costs:

- (i) For providing technical assistance in support of public participation;
 - (ii) For providing written opinions on a cleanup that qualifies for and appropriately uses a model remedy; or
 - (iii) Based on a person's ability to pay. If costs are waived, the department may file a lien against the real property for which the department has incurred the costs pursuant to RCW [70A.305.060](#).
- (3) The department may offer an expedited process for providing informal advice and assistance under the program. Except as provided under subsection (2)(b) of this section, the department must collect, from persons requesting expedited advice and assistance, all costs incurred by the department in providing the advice and assistance. The department may establish conditions for requesting expedited advice and assistance.
- (4) The department may adopt rules to implement the program. To ensure that the adoption of rules will not delay the implementation of independent remedial actions, the department may implement the cost waiver and expedited process specified in subsections (2)(b) and (3) of this section through interpretive guidance pending adoption of rules.
- (5) The department must track the number of requests for reviews of planned or completed independent remedial actions under the program and establish performance measures to track how quickly the department is able to respond to those requests. The department's tracking system must include a category for tracking the length of time that elapses between the submission of a request for expedited advice and assistance on an independent remedial action at a facility under subsection (3) of this section and the issuance of a letter on the sufficiency of the cleanup at the facility.
- (6) The state, the department, and officers and employees of the state are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance under the program.
- (7) The voluntary cleanup account is created in the state treasury. All receipts from the fees collected and costs recovered under the expedited process in subsection (3) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to support the expedited process in subsection (3) of this section. If the department suspends the expedited process, any moneys remaining in the account may be used to carry out the purposes of the program. The account must retain its interest earnings in accordance with RCW [43.84.092](#).

[[2020 c 20 § 1318](#); [2019 c 95 § 2](#). Formerly RCW [70.105D.180](#).]

NOTES:

Intent—2019 c 95: "Cleaning up and redeveloping contaminated properties is essential to the health and economic prosperity of our communities. Most cleanups are performed voluntarily by property owners and are driven by the sale or redevelopment of the properties. Many of these property owners request written opinions on the sufficiency of their voluntary cleanups from the department of ecology. Buyers and lenders often require these opinions when

property owners sell or redevelop contaminated properties. Providing expedited reviews of voluntary cleanups would encourage and expedite more cleanup and redevelopment projects. It is the intent of the legislature to support the cleanup and redevelopment of contaminated properties in our communities by providing the department of ecology with the additional tools and resources necessary for conducting expedited reviews of voluntary cleanups.

The availability of affordable housing is of vital importance to the health, safety, and welfare of the residents of the state. It is in the public interest to facilitate the cleanup and redevelopment of contaminated and underutilized properties within our communities for affordable housing. It is the intent of the legislature to encourage voluntary cleanups of these properties for affordable housing development by waiving the department of ecology's costs of reviewing voluntary cleanups." [[2019 c 95 § 1.](#)]

RCW 70A.305.180 Model toxics control operating account.

- (1)** The model toxics control operating account is hereby created in the state treasury.
- (2)** Moneys in the model toxics control operating account must be used only to carry out the purposes of this chapter, including but not limited to the following:
 - (a)** The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter [70A.300](#) RCW;
 - (b)** The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter [70A.205](#) RCW;
 - (c)** The hazardous waste clean-up program required under this chapter;
 - (d)** State matching funds required under federal cleanup law;
 - (e)** Financial assistance for local programs and plans, including local solid waste financial assistance, in accordance with chapters [70A.405](#), [70A.205](#), [70A.214](#), [70A.224](#), and [70A.300](#) RCW;
 - (f)** State government programs for the safe reduction, recycling, or disposal of paint and hazardous wastes from households, small businesses, and agriculture;
 - (g)** Oil and hazardous materials spill prevention, preparedness, training, and response activities;
 - (h)** Water and environmental health protection and monitoring programs;
 - (i)** Programs authorized under chapter [70A.135](#) RCW;
 - (j)** A public participation program;
 - (k)** Development and demonstration of alternative management technologies designed to carry out the hazardous waste management priorities of RCW [70A.300.260](#);
 - (l)** State agriculture and health programs for the safe use, reduction, recycling, or disposal of pesticides;
 - (m)** Funding requirements to maintain receipt of federal funds under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et seq.);
 - (n)** Air quality programs and actions for reducing public exposure to toxic air pollution;
 - (o)** Petroleum-based plastic or expanded polystyrene foam debris clean-up activities in fresh or marine waters; and
 - (p)** For the 2021-2023 fiscal biennium, and solely to continue the policy of previous biennia, forest practices at the department of natural resources.

- (3) Except for unanticipated receipts under RCW [43.79.260](#) through [43.79.282](#), moneys in model toxics control operating account may be spent only after appropriation by statute.
- (4) One percent of the moneys collected under RCW [82.21.030](#) must be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation that are not expended at the close of any biennium revert to the model toxics control operating account.
- (5) The department must adopt rules for grant or loan issuance and performance.
- (6) During the 2023-2025 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the model toxics control operating account to the state general fund.

[[2023 c 475 § 940](#); [2021 c 334 § 988](#); [2020 c 20 § 1319](#); [2019 c 422 § 202](#). Formerly RCW [70.105D.190](#).]

NOTES:

Effective date—2023 c 475: See note following RCW [16.76.030](#).

Conflict with federal requirements—Effective date—2021 c 334: See notes following RCW [43.79.555](#).

Effective date—Intent—2019 c 422: See notes following RCW [82.21.010](#).

RCW 70A.305.190 Model toxics control capital account.

*** CHANGE IN 2024 *** (SEE [5949-S.SL](#)) ***

- (1)** The model toxics control capital account is hereby created in the state treasury.
- (2)** In addition to the funds deposited into the model toxics control capital account required under RCW [82.21.030](#), the following moneys must be deposited into the model toxics control capital account:
 - (a)** The costs of remedial actions recovered under this chapter, except as provided under RCW [70A.305.170](#)(7);
 - (b)** Penalties collected or recovered under this chapter; and
 - (c)** Any other money appropriated or transferred to the account by the legislature.
- (3)** Moneys in the model toxics control capital account must be used for the improvement, rehabilitation, remediation, and cleanup of toxic sites and other capital-related expenditures for programs and activities identified in subsection (4) of this section.
- (4)** Moneys in the model toxics control capital account may be used only for capital projects and activities that carry out the purposes of this chapter and for financial assistance to local governments or other persons to carry out those projects or activities, including but not limited to the following, generally in descending order of priority:
 - (a)** Remedial actions, including the following generally in descending order of priority:
 - (i)** Extended grant agreements entered into under subsection (5)(a) of this section;
 - (ii)** Grants or loans to local governments for remedial actions, including planning for adaptive reuse of properties as provided for under subsection (5)(d) of this section. The department must prioritize funding of remedial actions at:
 - (A)** Facilities on the department's hazardous sites list with a high hazard ranking for which there is an approved remedial action work plan or an equivalent document under federal cleanup law;
 - (B)** Brownfield properties within a redevelopment opportunity zone if the local government is a prospective purchaser of the property and there is a department-approved remedial action work plan or equivalent document under the federal cleanup law;
 - (iii)** Department-conducted remedial actions;
 - (iv)** Grants to persons intending to remediate contaminated real property for development of affordable housing;
 - (v)** Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with clean-up standards under RCW [70A.305.030](#)(2)(e) if:

- (A) The amount and terms of the funding are established under a settlement agreement under RCW [70A.305.040](#)(4); and
 - (B) The director has found that the funding will achieve both a substantially more expeditious or enhanced cleanup than would otherwise occur, and the prevention or mitigation of unfair economic hardship;
 - (vi) Public funding to assist prospective purchasers to pay for the costs of remedial action in compliance with clean-up standards under RCW [70A.305.030](#)(2)(e) if:
 - (A) The facility is located within a redevelopment opportunity zone designated under RCW [70A.305.150](#);
 - (B) The amount and terms of the funding are established under a settlement agreement under RCW [70A.305.040](#)(5); and
 - (C) The director has found the funding will achieve a substantially more expeditious or enhanced cleanup than would otherwise occur, provide a public benefit in addition to cleanup commensurate with the scope of the public funding; and meet any additional criteria established in rule by the department; and
 - (vii) To expedite multiparty clean-up efforts, purchase of remedial action cost-cap insurance;
- (b) Grants, or loans, or contracts to local governments for solid waste plans and programs under chapters [70A.205](#), [70A.214](#), [70A.224](#), [70A.222](#), [70A.230](#), and [70A.300](#) RCW. Funds must be allocated consistent with priorities and matching requirements in the respective chapters;
 - (c) Toxic air pollutant reduction programs, including grants or loans to local governments for woodstoves and diesel;
 - (d) Grants, loans, or contracts to local governments for hazardous waste plans and programs under chapters [70A.405](#) and [70A.300](#) RCW, including chemical action plan implementation. Funds must be allocated consistent with priorities and matching requirements in the respective chapters; and
 - (e) Petroleum-based plastic or expanded polystyrene foam debris clean-up activities in fresh or marine waters.
- (5) The department may establish and administer a program to provide grants and loans to local governments for remedial actions, including planning for adaptive reuse of contaminated properties. To expedite cleanups throughout the state, the department may use the following strategies when providing grants to local governments under this subsection:
- (a) Enter into an extended grant agreement with a local government conducting remedial actions at a facility where those actions extend over multiple biennia and the total eligible cost of those actions exceeds \$20,000,000. The agreement is subject to the following limitations:

- (i) The initial duration of such an agreement may not exceed 10 years. The department may extend the duration of such an agreement upon finding substantial progress has been made on remedial actions at the facility;
 - (ii) Extended grant agreements may not exceed 50 percent of the total eligible remedial action costs at the facility; and
 - (iii) The department may not allocate future funding to an extended grant agreement unless the local government has demonstrated to the department that funds awarded under the agreement during the previous biennium have been substantially expended or contracts have been entered into to substantially expend the funds;
- (b) Enter into a grant agreement with a local government conducting a remedial action that provides for periodic reimbursement of remedial action costs as they are incurred as established in the agreement;
- (c) Enter into a grant agreement with a local government prior to it acquiring a property or obtaining necessary access to conduct remedial actions, provided the agreement is conditioned upon the local government acquiring the property or obtaining the access in accordance with a schedule specified in the agreement;
- (d) Provide integrated planning grants to local governments to fund studies necessary to facilitate remedial actions at brownfield properties and adaptive reuse of properties following remediation. Eligible activities include, but are not limited to: Environmental site assessments; remedial investigations; health assessments; feasibility studies; site planning; community involvement; land use and regulatory analyses; building and infrastructure assessments; economic and fiscal analyses; and any environmental analyses under chapter [43.21C](#) RCW;
- (e) Provide grants to local governments for remedial actions related to area-wide groundwater contamination. To receive the funding, the local government does not need to be a potentially liable person or be required to seek reimbursement of grant funds from a potentially liable person;
- (f) The director may alter grant matching requirements to create incentives for local governments to expedite cleanups when one of the following conditions exists:
 - (i) Funding would prevent or mitigate unfair economic hardship imposed by the clean-up liability;
 - (ii) Funding would create new substantial economic development, public recreational opportunities, or habitat restoration opportunities that would not otherwise occur; or
 - (iii) Funding would create an opportunity for acquisition and redevelopment of brownfield property under RCW [70A.305.040](#)(5) that would not otherwise occur; and

- (g) When pending grant applications under subsection (4)(d) and (e) of this section exceed the amount of funds available, designated redevelopment opportunity zones must receive priority for distribution of available funds.
- (6) Except for unanticipated receipts under RCW [43.79.260](#) through [43.79.282](#), moneys in model toxics control capital account may be spent only after appropriation by statute.
- [[2022 c 102 § 2](#); [2020 c 20 § 1320](#); [2019 c 422 § 203](#). Formerly RCW [70.105D.200](#).]

NOTES:

Findings—2022 c 102: "The legislature finds that:

- (1) Remedial action grants are an effective means to assist a local government achieve toxic waste cleanup; and
- (2) Requiring a local government to have all the necessary permits in hand prior to receiving remedial action grant funding has caused unintended delays in implementing projects."
- [[2022 c 102 § 1](#).]

Effective date—Intent—2019 c 422: See notes following RCW [82.21.010](#).

RCW 70A.305.200 Model toxics control stormwater account.

- (1)** The model toxics control stormwater account is hereby created in the state treasury.
- (2)** Moneys in the model toxics control stormwater account must be used for operating and capital programs, activities, and projects identified in subsection (3) of this section directly relating to stormwater pollution control.
- (3)** Moneys in the model toxics control stormwater account must be used only to carry out the operating and capital programs, activities, and projects directly relating to stormwater activities under RCW [70A.305.180](#) and [70A.305.190](#), including but not limited to the following:
 - (a)** Stormwater pollution control projects and activities that protect or preserve existing remedial actions or prevent hazardous clean-up sites;
 - (b)** Stormwater financial assistance to local governments that assist in compliance to the purposes of this chapter.
- (4)** Except for unanticipated receipts under RCW [43.79.260](#) through [43.79.282](#), moneys in the model toxics control stormwater account may be spent only after appropriation by statute.

[[2020 c 20 § 1321](#); [2019 c 422 § 204](#). Formerly RCW [70.105D.210](#).]

NOTES:

Effective date—Intent—2019 c 422: See notes following RCW [82.21.010](#).

RCW 70A.305.900 Short title – 1989 c 2.

This act shall be known as "the model toxics control act."

[1989 c 2 § 22 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.900.]

RCW 70A.305.901 Captions – 1989 c 2.

As used in this act, captions constitute no part of the law.

[1989 c 2 § 21 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.905.]

RCW 70A.305.902 Construction – 1989 c 2.

The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern.

[1989 c 2 § 19 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.910.]

RCW 70A.305.903 Existing agreements – 1989 c 2.

The consent orders and decrees in effect on March 1, 1989, shall remain valid and binding.

[1989 c 2 § 20 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.915.]

RCW 70A.305.904 Effective date – 1989 c 2.

- (1)** Sections 1 through 24 of this act shall take effect March 1, 1989, except that the director of ecology and the director of revenue may take whatever actions may be necessary to ensure that sections 1 through 24 of this act are implemented on their effective date.
- *(2)** This section does not apply and shall have no force or effect if (a) this act is passed by the legislature in the 1988 regular session or (b) no bill is enacted by the legislature involving hazardous substance cleanup (along with any other subject matter) between August 15, 1987, and January 1, 1988.

[1989 c 2 § 26 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.920.]

NOTES:

***Reviser's note:** Neither condition contained in subsection (2) was met.

Uniform Environmental Covenants Act
Chapter 64.70 RCW

Uniform Environmental Covenants Act

Chapter 64.70 RCW

RCW Sections

64.70.005	Findings—National uniform legislation.
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RCW 64.70.005 Findings – National uniform legislation.

The legislature finds that the national conference of commissioners on uniform state laws has developed uniform legislation called the uniform environmental covenants act. The act ensures that environmental covenants, recorded use restrictions negotiated in connection with hazardous waste site cleanups, and other environmental response projects are legally valid and enforceable. The uniform environmental covenants act achieves this objective by providing clear statutory standards that override court-made doctrines that do not fit such cleanup and reuse contexts. The legislature further finds that nothing in this chapter will amend or modify any local or state laws that determine when environmental covenants are required, when a particular contaminated site must be cleaned up, or the standards for a cleanup.

Adoption of the uniform environmental covenants act in Washington will provide all participants in a cleanup with greater confidence that environmental covenants and other institutional controls will be effective over the life of the cleanup. This will facilitate cleanups of many sites and assist in the recycling of urban brownfield properties into new economic uses for the benefit of the citizens of Washington.

This chapter adopts most provisions of the uniform legislation while making modifications to integrate the uniform environmental covenants act with Washington's environmental cleanup programs.

[[2007 c 104 § 1.](#)]

RCW 64.70.010 **Short title.**

This chapter may be cited as the uniform environmental covenants act.

[[2007 c 104 § 2.](#)]

RCW 64.70.015 Application – Construction – 2007 c 104.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

[[2007 c 104 § 14.](#)]

RCW 64.70.020 Definitions.

*** CHANGE IN 2024 *** (SEE [5796-S.SL](#)) ***

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) **"Activity or use limitations"** means restrictions or obligations created under this chapter with respect to real property.
- (2) **"Agency"** means either the department of ecology, the pollution liability insurance agency, or the United States environmental protection agency, whichever determines or approves the environmental response project pursuant to which the environmental covenant is created.
- (3)(a) **"Common interest community"** means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(b) **"Common interest community"** includes but is not limited to:

 - (i) An association of apartment owners as defined in RCW [64.32.010](#);
 - (ii) A unit owners' association as defined in RCW [64.34.020](#) and organized under RCW [64.34.300](#);
 - (iii) A master association as provided in RCW [64.34.276](#);
 - (iv) A subassociation as provided in RCW [64.34.278](#); and
 - (v) A homeowners' association as defined in RCW [64.38.010](#).
- (4) **"Environmental covenant"** means a servitude arising under an environmental response project that imposes activity or use limitations.
- (5) **"Environmental response project"** means a plan or work performed for environmental remediation of real property and conducted:

 - (a) Under a federal or state program governing environmental remediation of real property, including chapters [43.21C](#), [64.44](#), [70A.205](#), [70A.388](#), [70A.300](#), [70A.305](#), [90.48](#), and [90.52](#) RCW;
 - (b) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or
 - (c) Under the state voluntary clean-up program authorized under chapter [70A.305](#) RCW or technical assistance program authorized under chapter [70A.330](#) RCW.
- (6) **"Holder"** means the grantee of an environmental covenant as specified in RCW [64.70.030](#)(1).

- (7) **"Person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (8) **"Record,"** used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (9) **"State"** means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

[[2020 c 20 § 1064](#); [2017 c 23 § 6](#); [2007 c 104 § 3](#).]

RCW 64.70.030 Interests in real property–Subordination.

- (1)** Any person, including a person that owns an interest in the real property, the agency, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.
- (2)** A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.
- (3)** An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.
- (4)** The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:
 - (a)** An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.
 - (b)** This chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.
 - (c)** A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association.
 - (d)** An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

[[2007 c 104 § 4.](#)]

RCW 64.70.040 Covenants—Contents—Agency discretion—Local land use consideration.

- (1)** An environmental covenant must:

 - (a)** State that the instrument is an environmental covenant executed pursuant to this chapter;
 - (b)** Contain a legally sufficient description of the real property subject to the covenant;
 - (c)** Describe with specificity the activity or use limitations on the real property;
 - (d)** Identify every holder;
 - (e)** Be signed by the agency, every holder, and unless waived by the agency every owner of the fee simple of the real property subject to the covenant; and
 - (f)** Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.
- (2)** In addition to the information required by subsection (1) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

 - (a)** Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;
 - (b)** Requirements for periodic reporting describing compliance with the covenant;
 - (c)** Rights of access to the property granted in connection with implementation or enforcement of the covenant;
 - (d)** Narrative descriptions of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;
 - (e)** Limitations on amendment or termination of the covenant in addition to those contained in RCW [64.70.090](#) and [64.70.100](#);
 - (f)** Rights of the holder in addition to its right to enforce the covenant pursuant to RCW [64.70.110](#);
 - (g)** Other information, restrictions, or requirements required by the agency, including the department of ecology under the authority of chapter [70A.305](#) RCW.
- (3)** In addition to other conditions for its approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property to sign the covenant.
- (4)** The agency may also require notice and opportunity to comment upon an environmental covenant as part of public participation efforts related to the environmental response project.

- (5)** The agency shall consult with local land use planning authorities in the development of the land use or activity restrictions in the environmental covenant. The agency shall consider potential redevelopment and revitalization opportunities and obtain information regarding present and proposed land and resource uses, and consider comprehensive land use plan and zoning provisions applicable to the real property to be subject to the environmental covenant.

[2020 c 20 § 1065; 2007 c 104 § 5.]

RCW 64.70.050 Covenants—Enforceability.

- (1)** An environmental covenant that complies with this chapter runs with the land.
- (2)** An environmental covenant that is otherwise effective is valid and enforceable even if:
 - (a)** It is not appurtenant to an interest in real property;
 - (b)** It can be or has been assigned to a person other than the original holder;
 - (c)** It is not of a character that has been recognized traditionally at common law;
 - (d)** It imposes a negative burden;
 - (e)** It imposes an affirmative obligation on a person having an interest in the real property or on the holder;
 - (f)** The benefit or burden does not touch or concern real property;
 - (g)** There is no privity of estate or contract;
 - (h)** The holder dies, ceases to exist, resigns, or is replaced; or
 - (i)** The owner of an interest subject to the environmental covenant and the holder are the same person.
- (3)** An instrument that creates restrictions or obligations with respect to real property that would qualify as activity or use limitations except for the fact that the instrument was recorded before July 22, 2007, is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (2) of this section or because it was identified as an easement, servitude, deed restriction, or other interest. This chapter does not apply in any other respect to such an instrument.
- (4)** This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state.

[[2007 c 104 § 6.](#)]

RCW 64.70.060 Use of real property—Chapter application.

This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property that are authorized by zoning or by law other than this chapter.

[[2007 c 104 § 7.](#)]

RCW 64.70.070 Covenants—Providing copies.

- (1)** A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:

 - (a)** Each person that signed the covenant;
 - (b)** Each person holding a recorded interest in the real property subject to the covenant;
 - (c)** Each person in possession of the real property subject to the covenant at the time the covenant is executed;
 - (d)** Each municipality or other unit of local government in which real property subject to the covenant is located;
 - (e)** The department of ecology; and
 - (f)** Any other person the agency requires.
- (2)** The validity of an environmental covenant is not affected by failure to provide a copy of the covenant as required under this section.
- (3)** If the agency has not designated the persons to provide a copy of an environmental covenant, the grantor shall be responsible for providing a copy of an environmental covenant as required under subsection (1) of this section.

[[2007 c 104 § 8.](#)]

RCW 64.70.080 Covenants—Recording and priority of interests.

- (1)** An environmental covenant and any amendment or termination of the covenant must be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.
- (2)** Except as otherwise provided in RCW [64.70.090](#)(3), an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

[[2007 c 104 § 9](#).]

RCW 64.70.090 **Covenant—Duration—Court action.**

- (1)** An environmental covenant is perpetual unless it is:
 - (a)** By its terms limited to a specific duration or terminated by the occurrence of a specific event;
 - (b)** Terminated by consent pursuant to RCW [64.70.100](#);
 - (c)** Terminated pursuant to subsection (2) of this section;
 - (d)** Terminated by foreclosure of an interest that has priority over the environmental covenant; or
 - (e)** Terminated or modified in an eminent domain proceeding, but only if:
 - (i)** The agency that signed the covenant is a party to the proceeding;
 - (ii)** All persons identified in RCW [64.70.100](#) (1) and (2) are given notice of the pendency of the proceeding; and
 - (iii)** The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.
- (2)** If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in RCW [64.70.100](#) (1) and (2) have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant.
- (3)** Except as otherwise provided in subsections (1) and (2) of this section, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.
- (4)** An environmental covenant may not be extinguished, limited, or impaired by the extinguishment of a mineral interest under chapter [78.22](#) RCW.

[[2007 c 104 § 10.](#)]

RCW 64.70.100 Covenant—Amendment or termination by consent.

- (1)** An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

 - (a)** The agency;
 - (b)** Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;
 - (c)** Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and
 - (d)** Except as otherwise provided in subsection (4)(b) of this section, the holder.
- (2)** If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.
- (3)** Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.
- (4)** Except as otherwise provided in an environmental covenant:

 - (a)** A holder may not assign its interest without consent of the other parties;
 - (b)** A holder may be removed and replaced by agreement of the other parties specified in subsection (1) of this section; and
 - (c)** A court of competent jurisdiction may fill a vacancy in the position of holder.

[[2007 c 104 § 11.](#)]

RCW 64.70.110 Violations—Civil actions—Regulatory authority under chapter—Liability.

- (1)** A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

 - (a)** A party to the covenant;
 - (b)** The agency or, if it is not the agency, the department of ecology;
 - (c)** Any person to whom the covenant expressly grants power to enforce;
 - (d)** A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; and
 - (e)** A municipality or other unit of local government in which the real property subject to the covenant is located.
- (2)** This chapter does not limit the regulatory authority of the agency or the department of ecology under law other than this chapter with respect to an environmental response project.
- (3)** A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant.

[[2007 c 104 § 12.](#)]

RCW 64.70.120 Covenants—Registry—Information contained.

- (1)** The department of ecology shall establish and maintain a registry that contains information identifying all environmental covenants established under this chapter and any amendment or termination of those covenants, including the county where the covenant is recorded and the recording number. The registry may also contain any other information concerning environmental covenants and the real property subject to them that the department of ecology considers appropriate. The registry is a public record for purposes of chapter [42.56](#) RCW, but the department shall maintain electronic access to the registry without requiring a public records request for any information included in the registry.
- (2)** Failure to include information or inclusion of inaccurate information concerning an environmental covenant in the registry does not invalidate or limit the application or enforceability of the covenant.

[[2007 c 104 § 13.](#)]

RCW 64.70.130 Electronic signatures in global and national commerce act.

This chapter modifies, limits, or supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001 et seq.) but does not modify, limit, or supersede section 101 of that act (15 U.S.C. Sec. 7001(a)) or authorize electronic delivery of any of the notices described in section 103 of that act (15 U.S.C. Sec. 7003(b)).

[[2007 c 104 § 15.](#)]

