DEPARTMENT OF ECOLOGY
State of Washington

Toxics Cleanup Program

Policy 520B: Interim Policy—Prospective Purchase Agreements

Established: August 1994

Contact: Policy and Technical Support Unit, Headquarters

Purpose: Recent amendments to the Model Toxics Control Act allow the Attorney General and Ecology to enter into settlements with a person not currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility. This policy provides Ecology employees guidance on the use of this form of settlement, typically called a "prospective purchaser agreement."

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

Approved by: _____

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

Purpose and Applicability

Recent amendments to the Model Toxics Control Act allow the Attorney General and Ecology to enter into settlements with a person not currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility. This policy provides Ecology employees guidance on the use of this form of settlement, typically called a "prospective purchaser agreement."

1. Prospective Purchaser Agreements May Be Used Only Where They Would Yield Substantial New Resources To Facilitate Site Cleanup.

The primary mission of Ecology's Toxics Cleanup Program is to effect cleanup of contaminated sites, not to absolve potential site owners of liability under MTCA. For consistency with this mission and the policies in state statute, the focus of any proposed agreement should be on how the agreement will result in expediting cleanup of a site that would otherwise not occur or would occur much more slowly without the agreement. The proposal must include significant, real (not speculative) resources. An example would be an applicant proposing to redevelop a site and in the process of the redevelopment will be cleaning up the historic contamination. Another example would be where there are already viable PLPs at a site, but they do not currently have the resources to do the entire cleanup. In this later case, the applicant, prior to purchasing the site, agrees to supplement the current PLP resources to complete the cleanup.

Ecology will not accept proposed agreements for sites that do not require remedial action under MTCA, such as sites where the only concern is potential for contamination from off-site sources. Proposals for sites where a remedial action is already underway under an order or decree will not normally be accepted unless there are strong compelling reasons to start over. Proposals for purchasing a currently operating company that merely transfer ownership to a new company without proposing to clean up the site do not meet this statutory test.

Additional factors to consider in evaluation of this criterion:

a. The completeness of the information on the extent of environmental problems at the site. Where the extent and decree has not been fully defined, it is not possible to know if the applicants proposed contribution to the cleanup will be substantial. In these instances, the applicant may need to commit to further testing and cleanup as part of the redevelopment proposal.

b. The completeness of the cleanup and level of certainty that the cleanup will work. Proposals that provide for completion of all necessary remedial actions at the facility will be viewed most favorably. Proposals that provide for less than complete cleanups may also be considered; however, such proposals would be acceptable only if other factors weigh strongly in favor of proceeding with the agreement.

c. The availability of other PLPs or other funds to complete the cleanup, should a less than complete cleanup be proposed.

d. Getting a cleanup done by a private party that would otherwise require MTCA monies, or done much more quickly than would be done with MTCA monies.

e. The priority of the site for cleanup. Higher priority sites should be viewed more favorably.

2. In Addition To The Specific Statutory Requirements For Prospective Purchaser Agreements in RCW 70.105D.040(5), All Such Agreements Shall Be In the Form Of A Consent Decree Meeting the Requirements in RCW 70.105D.040(4).

A prospective purchaser agreement is merely one type of settlement provided for under MTCA. As such, these agreements are settlements subject to the requirements in RCW 70.105D.040(4). In addition, these agreements protect the settling person from contribution claims and may include mixed funding, if Ecology has any available. See WAC 173-340-520 for procedures for processing requests for consent decrees.

The decision to enter into negotiations for a prospective purchaser agreement is discretionary and must be agreed to by both Ecology and the Attorney General. Since they are consent decrees, prospective purchaser agreements require the involvement of an assistant attorney general in any negotiations and processing of the application.

One test of a consent decree is that it is supposed to expedite remedial actions. This includes negotiations as well as cleanup activities. Under WAC 173-340-520(1), for PLP-initiated consent decrees, Ecology sets a time limit for negotiations based on a schedule proposed by the PLP. A suggested time limit for negotiation of prospective purchaser agreements is 90 days, recognizing that complex sites may require more time. It should be made clear at the beginning of the negotiations that Ecology and the Office of the Attorney General do not have the resources to engage in protracted negotiations and if a settlement cannot be reached within the allotted time limit, staff may be reassigned to other projects. Where an application is rejected due to insufficient staff resources or negotiations are broken off due failure to reach agreement, the applicant should be reminded of the independent cleanup program option for less formal Ecology review of the cleanup.

As a consent decree under MTCA, prospective purchaser agreements may contain a covenant not to sue but such covenant must contain a reopener clause. This is an important element of these agreements, warranting careful attention of the site manager. The extent of any covenant granted should consider the sufficiency of the data defining the extent and degree of contamination at the site, the completeness of the cleanup, and the degree of confidence in the technical reliability of the cleanup method. Where a less than complete cleanup is proposed that will result in long-term care and maintenance costs (such as would be the case for cleanups relying on containment), the responsibility

for these costs and any failure of the cleanup must remain with the prospective purchaser or another viable PLP. These responsibilities will need to be explicitly discussed in the consent decree.

3. An Application For A Prospective Purchaser Agreement Must Include Sufficient Information For Ecology To Make The Necessary Findings Under Chapter 70.105D.040 & .050.

The submittal requirements for consent decrees are specified in WAC 173-340-520(1)(a). These requirements, plus that information necessary to make the requisite statutory findings for prospective purchaser agreements are compiled in Appendix A (attached).

4. The Department's Costs Of Negotiating A Prospective Purchaser Agreement And Overseeing Any Remedial Action Conducted Under The Agreement Shall Be Paid By The Person Proposing The Agreement.

Section Managers should encourage limited up-front consultation by potential applicants where the contents of this policy and needed information can be discussed prior to submitting a written application. It would also be appropriate to discuss other options, such as IRAP, that may satisfy the applicant's needs.

Ecology will not charge an up-front fee to screen an initial application for a prospective purchaser agreement. However, if significant time (more than 10 hours) is expected to be involved in the review of an initial application, a job code should be established. If Ecology and the Attorney General decide the application can proceed, the applicant should be requested to submit a detailed proposal accompanied by a signed prepayment agreement and a deposit of 25% of the total agreement amount (see Policy 500C). The prepayment agreement should reimburse the costs incurred for review to date and pay for the future costs of negotiating the agreement (See Policy 500C Prepaid Cleanup Oversight).

The Section Manager may waive the requirement for a prepayment agreement for program plan sites where resources have already been allocated to work on the site. In these instances the section manager should establish a job code to charge time for negotiating the prospective purchaser agreement and all costs incurred during negotiations should be reimbursed under the prospective purchaser agreement.

All proposed prospective purchaser agreements shall include provisions requiring payment of Ecology's costs to oversee implementation of the agreement.

NOTE: Applications may be rejected for substantive reasons and/or due to lack of resources to process the application by Ecology or the Attorney General's office. It is important for section managers to carefully consider resource impacts of prospective purchaser agreements, especially those with long-term resource commitments. A commitment to enter into a prepayment agreement should be made only after the Ecology

Division of the Attorney General's office has indicated they have the resources to process the application.

5. Prospective Purchaser Agreements May Only Be Made With Persons Currently Not A PLP At The Site.

The applicant must include a PLP search with the final application. If the applicant is a privately held company, they must identify their company officers and all owners. If the applicant is a publicly held company, they must identify their corporate officers and all owners with at least a 10% financial interest in the company. The applicant must also identify the sources of financing proposed for the purchase/redevelopment. There must be no relationship between the current PLPs and the persons proposing the agreement, unless it can be clearly shown such relationships are incidental to the transaction and would not result in PLP status. Where such relationship is unclear, additional information should be sought to clarify the relationship. Where an applicant refuses or is unable to provide sufficient information, the agreement should be rejected.

If the site contamination is due in part to off-site sources, the information required should be expanded to include the applicant's relationship to the off-site sources.

The decree must include an attached affidavit in which the person requesting the prospective purchaser agreement certifies that they are not a PLP at the site. The decree must also include language indicating that the decree is void if the prospective purchaser is a PLP. Site managers should consult with an assistant attorney general for appropriate language to meet these requirements.

Factors to Consider:

- Are any of the principles in the applicant's company the same individuals in current PLP companies?
- Is the applicant a subsidiary of current PLP companies?
- Are the financial backers of the project the same as those of PLPs?
- If contamination is the result of an off-site source, is the applicant a PLP for the off-site source?

6. Where A Less Than Complete Cleanup Is Proposed, An Enforcement Strategy Shall Be Developed For Addressing The PLP Status Of The Current Site Owner And Other PLPs.

Current owners are PLPs under MTCA. However, former owners are PLPs only if the release occurred while they owned the property, a more difficult standard to prove. Under normal circumstances, the current owner would be held accountable for the cleanup.

Prospective purchasers are required to provide substantial new resources towards site cleanup. If the prospective purchaser is proposing to assume responsibility for only part of the cleanup, then additional resources will be needed to complete the cleanup. In these instances the prospective purchaser should be requested to do a PLP search to identify other PLPs at the site, and Ecology staff should carefully review and evaluate this information.

Bringing other PLPs into the process has the advantage of bringing additional resources to the table for completing the cleanup. However, the disadvantage of bringing in other PLPs is that this can complicate and delay the process--an important consideration when a real estate transaction is pending. These factors need to be evaluated in developing an enforcement strategy for the site. At a minimum, when the prospective purchaser is proposing to assume less than full responsibility for the cleanup, all PLPs identified in the PLP search should be sent PLP status letters. This may bring to light additional information and open opportunities to bring in the additional assets of willing PLPs.

One concern that needs to be evaluated is whether assets gained from the sale of the property which could be applied to the cleanup could be unavailable in the future. If this is a concern, it will probably be appropriate to bring at least the current property owners into the transaction.

Any costs incurred for bringing other PLPs into the process should be paid by the prospective purchaser as an allowable expense under the prepayment agreement. Once a separate settlement has been negotiated with the other PLPs, the cost of administering the separate settlement should be borne by the settling parties.

NOTE: Whenever PLPs other than the prospective purchaser are brought into the site cleanup negotiations, it is necessary to negotiate a separate, parallel settlement.

7. The Applicant Must Have A Legal Commitment To Purchase, Redevelop, Or Reuse The Facility.

The commitment must be in the form of a long-term lease agreement, purchase option or contract or equivalent legal commitment to purchase, redevelop, or reuse the facility. The commitment must also include a schedule for starting the project within a reasonable period of time (a suggested time frame is two to five years depending on the time for cleanup to be completed and anticipated development permitting requirements). The applicant must be able to demonstrate the proposed use is consistent with current comprehensive plans and zoning for the jurisdiction the facility is located in. For redevelopments, the applicant should also have correspondence indicating the proposed use has undergone at least a preliminary review by relevant permitting agencies and the proposal is feasible pending resolution of cleanup issues.

8. The Prospective Purchaser Agreement Must Provide Substantial Public Benefit.

All proposals for prospective purchaser agreements must identify the public benefits of the project. The statute provides two examples of substantial public benefit:

a. "...the reuse of a vacant or abandoned manufacturing or industrial facility..."

To qualify under this provision, the applicant must demonstrate the facility proposed for redevelopment is currently idle and not being used. The applicant must also provide information confirming the facility was a manufacturing or industrial facility either through historic records or zoning. In addition, the proposal for reuse or redevelopment must be a manufacturing or industrial facility. The size of the proposed manufacturing facility or number of jobs to be created does not need to pass a certain threshold to meet this requirement. A proposal for a facility with substantial economic benefits (such as creating an abundance of high paying jobs) should be given a higher priority than smaller facilities, other factors being equal.

b. "...the development of a facility by a governmental entity to address an important public purpose..."

To qualify under this provision, the applicant must be a governmental entity. The facility should be identified in the public entity's capital facilities plan, and a firm schedule for facility development established and committed to. Buying land to simply hold it for some unidentified potential future use would not qualify under this provision. The proposed facility must serve an important public purpose. An example would be a facility identified as an essential public facility under the Growth Management Act. Another would be a key parcel of land needed to realize completion of a typically much larger public project and no other reasonable alternatives exist.

For proposals consistent with the above examples and for others circumstances that do not fall within these two specific statutory examples, the following factors should be considered:

a. Making currently idle land productive again.

b. Number of new jobs created or existing jobs retained, especially high paying base industry jobs (i.e., jobs that pay higher than the median income for the area).

c. Consistency of the purchase/redevelopment proposal with land use plans and other regulatory requirements.

d. Social benefits/impacts of the purchase/redevelopment.

e. Recreational benefits of the purchase/redevelopment.

f. The environmental benefits of the project (in addition to cleanup).

g. The affect of the proposal on the tax base of the community.

h. Whether future operations will cause additional environmental problems at the site.

NOTE: In addition to the above factors, the benefits of site cleanup can be factored into the "public benefit" analysis. However, any proposal that focuses primarily on the public benefits of the cleanup does not meet this statutory test. There must be a clear substantive public benefit to the project, in addition to the cleanup proposed. Thus, this evaluation of public benefits should focus initially on the redevelopment project itself. The benefits of site cleanup should be considered only after, or in addition to, the other public benefits of the project having been weighed. See the discussion under "substantial new resources to facilitate cleanup" in paragraph #1 of this policy for factors to consider in evaluating the public benefit aspects of the cleanup.

9. Proposed Remedial Actions At The Site Must Be Consistent With The MTCA Rules.

A prospective purchaser agreement should not be used as a vehicle to shortcut necessary technical investigations and evaluations, public opportunity to review and comment on the proposed cleanup, or the technical standards with which a cleanup must comply under the law. Proposals to only partially clean up a site must identify who would be responsible for the remainder of the cleanup, and when the cleanup would be expected to be completed.

Public review of prospective purchaser agreements must comply with the requirements for consent decrees provided for in WAC 173-340-520 and the public participation requirements in WAC 173-340-600.

10. The Applicant Must Demonstrate That The Use Proposed For The Site Will Not Contribute To The Existing Release Or Threatened Release Or Interfere With Remedial Actions That May Be Needed At The Site.

To make this demonstration, the applicant will be required to:

a. Define the extent and degree of the existing contamination. This will require essentially a remedial investigation level of study at many sites.

   The level of information may be less than a full RI if, in the site manager's judgement, this demonstration can be made with less information. Likely situations where this could occur are: (1) The applicant is committing to a complete cleanup of the site, or (2) The applicant is committing to a less than complete cleanup of the site but there are other viable PLPs to do the rest of the investigation and cleanup and the proposal would not foreclose any remedial actions.

However, even in these situations the minimum level of study to make this demonstration would be defining the contamination sufficiently for areas of future construction and operation, and for areas that could be affected by future construction and operation.

NOTE: Sufficiently defining the extent and degree of contamination is also critical to defining what the prospective purchaser agreement covers (i.e., The decree must include a reopener for conditions unknown at the time of the settlement. Therefore, what isn't defined is not covered in the decree.).

b. Select a proposed cleanup action that is consistent with the rules under MTCA or, if a cleanup action has not been selected, identify cleanup actions representing a range of likely alternative remedial actions at the site that would be consistent with MTCA. This should be information equivalent to a state feasibility study.

NOTE: This is not intended to imply an expensive full-blown feasibility analysis be done if the necessary cleanup action is obvious and undisputed. For example, if the applicant is proposing to excavate all of the contaminated soil as part of foundation work for the redevelopment, and ground water contamination was not a problem at the site, the focus of the feasibility study could be limited to disposal or treatment options for the excavated soil.

c. Have firm, detailed plans for future use of the site. These plans should have completed at least an initial review by the local land use authority (often called a feasibility review).

Factors to consider in evaluating proposals:

- Completeness of information on extent of contamination at site.
- Likely future remedial actions, including those after purchase/redevelopment, if any.
- Accessibility of areas of remaining contamination and areas needed to conduct additional remedial actions after purchase/redevelopment. Would future remedial actions be impeded by the proposal?
- Types of hazardous substances to be used, discharged, or otherwise managed by the new facility vs. those currently present on the site. If the proposed use would handle or discharge the same hazardous substances that the current or prior facility did, the historic contamination must be cleaned up sufficiently to distinguish between the historic and any new contamination, or it must be technically feasible to monitor to distinguish old vs. any new contamination.
- Whether the development will exacerbate the existing release.
- Availability of other PLPs to complete the investigations and cleanup.

NOTE: All prospective purchaser settlements must include language that authorizes Ecology access to the site for conducting and overseeing remedial actions. Where we anticipate needing access in the future for remedial actions, the decree must authorize this access even in situations where it would interfere with the use of the site. The decree should also explicitly state that failure to provide access to Ecology or other PLPs to conduct necessary remedial actions would constitute interference with the remedial action and void the consent decree. Site managers should consult with an assistant attorney general for appropriate site-specific language.

11. The Applicant Must Demonstrate The Proposed Use of The Facility Will Not Likely Increase Health Risks To Persons At Or In The Vicinity Of The Site.

To make this demonstration the applicant will need to have defined the hazardous substances present at the site, their likely concentration, and potential exposure pathways. The applicant must also have identified a proposed remedial action to be undertaken, or several remedial actions representing the range of remedial actions, that would likely be done at the site. Estimates of exposures of persons with access to the site, and to persons in the potentially affected vicinity during remediation and after site purchase/redevelopment, should be provided. For health risk calculations addressing post remediation exposures, the exposure assumptions in MTCA should be used to estimate long-term exposure potential.

The agreement must clearly state that it shall not be construed as a statement, representation, or finding by the state that the property is fit for any particular use or purpose. Factors to consider in evaluating the proposal are:

a. The completeness of the proposed cleanup. The final cleanup should be sufficient so that there is minimal potential for future exposure. The potential for contamination not cleaned up to spread or be re-exposed due to future site activities should be considered. Proposals that rely primarily on containment would not be suitable for residential use.

b. Activities at the site and on adjoining properties during remediation and after remediation.

c. Is a land use proposed that could increase the potential for exposure to hazardous substances? For example, residential use of a current industrial or commercial property.

d. Likelihood that the site use and potentially affected area will remain as proposed. This should take into consideration, historic land uses in the area, current and proposed land use plans and zoning, and current land use patterns in the area. The Ecology site manager should consult with the local land use jurisdiction planning staff when considering this factor.

e. The resources available to monitor for potential contaminate exposure for sites where contamination will remain after cleanup.

f. How conservative are the risk assumptions? Are they based on actual data and studies, or opinion and conjecture? Risk assumptions different than those used in MTCA should be based on site-specific data.

12. Prospective Purchaser Agreements May Be Transferred With The Property To Future Site Owners Under Limited Circumstances.

Ecology will consider including provisions in the consent decree allowing the benefits of the prospective purchaser agreement to transfer with the property to future site owners, provided the following factors are addressed:

- The future site owner is not a PLP.
- The same or comparable public benefits must be maintained after the transfer.
- Subsequent purchase/development will not violate any of the statutory requirements, that the development not interfere with any remedial actions, contribute to the existing release, or cause health problems.
- Conditions in the decree remain intact: i.e., elements in the boiler plate such as continued access, payment of Ecology's oversight costs, land use restrictions, and long-term care and maintenance requirements.
- The prospective purchaser agrees to notify the state of transfer of the agreement at least 60 days in advance of the transfer.
- The person to whom the agreement is being transferred agrees to become a party to the decree and become bound to the requirements in the decree.
- Any site-specific factors/requirements are met.

APPENDIX A

Submittal Guidelines and Procedures for Prospective Purchaser Agreements

A prospective purchaser agreement must take the form of a consent decree under MTCA. All such agreements must meet the general requirements for a consent decree in Chapter 70.105D.040(4) RCW, as well as the requirements specific to prospective purchaser agreements in Chapter 70.105D.040(5). Procedures for requesting consent decrees are specified in Ecology's Cleanup Regulations, WAC 173-340-520. This guidance provides a compiled list of submittal contents needed to satisfy these various requirements.

NOTE: Because prospective purchase agreements divert Ecology and Attorney General resources from other higher priority sites and activities, prospective purchasers are required to enter into a prepayment agreement. A prepayment agreement assures that both agencies' costs for negotiations and oversight of the cleanup are reimbursed, consistent with the intent of MTCA (see also Policy 500C, Prepaid Cleanup Oversight). Where Ecology is required to hire additional personnel to process the application, negotiations can be significantly delayed until authorization to hire is granted. Applications may be rejected outright due to resource limitations. For this reason, applicants are encouraged to informally contact and discuss proposals with the appropriate Ecology regional office before submitting a formal application.

Initial Submittal

Applicants should compile and submit the following information in a letter to the department and the office of the attorney general via certified mail, return receipt requested, or by personal delivery. The letter should describe, based on available information:

NOTE: It is recognized the level of detail addressing these points will vary depending on availability of information at this early stage of discussion. However, the more detail the applicant provides the more definitive a department response can be.

1. The proposed remedial action, including the schedule for the work.

2. 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.

3. The facility, including location and boundaries.

4. 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.

5. A summary of the relevant historical use or conditions at the facility.

6. The date on which the person proposing the settlement will be ready to submit a detailed proposal.

7. Any special scheduling considerations for implementing the remedial actions. Include the current proposed schedule for purchase, redevelopment or reuse of the site. In general, Ecology anticipates a maximum 90-day negotiation time period for prospective purchaser agreements.

8. Names of other persons who the applicant has reason to believe may be PLPs at the facility.

9. A proposed public participation plan. The proposed plan should be commensurate with the nature of the proposal and site and include the elements listed in WAC 173-340-600(8).

10. Identification of the person(s) proposing the agreement. If a privately held company and not a person, the application must identify the corporate officers and all owners. If a publicly held company, the corporate officers and persons with more the 10% ownership interest in the company must be identified. Any affiliation between these persons and the current and past owners and operators and other PLPs at the site should be identified.

NOTE: Prospective purchaser agreements cannot be made with any person who is a PLP at the site.

11. Sufficient information to rank the site using Ecology's WARM ranking method.

NOTE: Low ranking sites will generally not be favorably considered unless there are considerable public benefits of the proposal.

12. A general description of the proposed continued use or redevelopment, or reuse of the site.

13. A general description of the public benefits of the settlement.

Ecology's Response

Ecology will review the application at no charge and respond to the applicant within 60 days as per WAC 173-340-520(1)(e). Ecology will also forward the application to the Office of the Attorney General for review.

NOTE: Favorable consideration of an application is discretionary by Ecology and Attorney General and either agency may independently reject the application due to substantive considerations or resource limitations. If the application is accepted, included in Ecology's response will be a draft prepayment agreement and a request for the applicant to sign the agreement to cover Ecology's costs of negotiation (see below).

Detailed Applications

For initial applications accepted by Ecology, the applicant should submit a detailed proposal within 90 days of Ecology's response or other time period specified in Ecology's response. The detailed application should include the following information:

NOTE: The detailed application shall be accompanied by a signed prepayment agreement and an initial deposit of 25% of the prepayment agreement amount to defray the costs of Ecology's and

the Attorney General's costs of processing the application. Applicants will also be required to pay the cost of Ecology's oversight of the cleanup, as specified in the consent decree.

1. A state remedial investigation/feasibility study complying with the requirements of WAC 173-340-350. Note: The level of detail in this study will depend on the informational needs of the specific facility and the redevelopment proposal. However, in all cases sufficient information must be submitted to meet the demonstrations necessary in the statute and to select a remedy under WAC 173-340-360 and solicit public comment on the appropriateness of the selected remedy.

2. A proposed plan for cleanup of the site complying with WAC 173-340-360.

3. Identification of the applicant's proposed share of the cleanup. Include a detailed description of the substantial new resources to be provided to facilitate cleanup. Where the applicant does not propose to conduct the entire cleanup, there must be other viable potentially liable persons or others who can do the rest of the cleanup. In these instances, the applicant should identify the parts of the cleanup others are expected to conduct and the persons expected to do these other parts of the cleanup.

4. Information describing the applicant's ability to conduct or finance the proposed remedial actions and the purchase, redevelopment, or reuse proposal. This information shall include written authorization for Ecology to contact persons financing the proposal to discuss the financial arrangements and identify these contact persons. Where the applicant is proposing to fund only part of the cleanup, information should be included indicating the willingness and financial viability of others to participate in the cleanup.

5. A detailed description of (including a plan), and an updated schedule for the purchase, redevelopment, or reuse of the site. The application should also include a legal commitment to the proposal in the form of a purchase option or contract or equivalent. The applicant should include information demonstrating the proposal is consistent with current comprehensive plans and zoning and identify any pending changes to these plans or zoning that could affect this consistency. Copies of any correspondence with any local, state, or federal agencies with land use jurisdiction or permitting authority for the proposal should be included.

6. A notarized letter from the current owners and operators of the site authorizing Ecology to access the site to verify the information submitted and oversee the cleanup, including conducting verification testing, if deemed necessary by Ecology. For applicants that are public agencies purchasing property through condemnation, other arrangements for access will need to be made in consultation with Ecology and the Attorney General's office.

7. Notarized letters from the applicant and the seller indicating they have fully disclosed all information in their possession which relates in any way to the proposal. For applicants that are public agencies purchasing property through condemnation, only a notarized letter from the applicant is required.

8. Information demonstrating the proposed use for the site will not contribute to the existing release or threatened release or interfere with remedial actions that may be needed at the site. To make this demonstration will require having a firm plan for use/development of the site, and defining the contamination in all areas where future construction and operations are to be located or could be affected by construction and operations.

9. Information demonstrating the proposed use for the site will not likely increase health risks to persons at or in the vicinity of the site. To make this demonstration requires:

a. Identification of the hazardous substances present at the site and their concentrations in the various media.

b. Activities at the site and in the potentially affected vicinity during remediation and after remediation. Identify potential exposure pathways for persons on-site and off-site. Site Management 1-316 October 28, 1994

c. The remedial action proposed for the site or if a specific remedial action has not been selected yet, the range of likely remedial actions for the site.

d. Estimates of exposures of persons with access to the site, and in the potentially affected vicinity during remediation and after site purchase/redevelopment. For long-term health risk estimates, the exposure assumptions in MTCA must be used.

10. A detailed description of the substantial public benefits of the project. This is a key demonstration that must be met under the statute. The application should be specific and include firm commitments regarding any public benefits claimed from the project.

11. A proposed schedule for negotiations of the prospective purchaser agreement and a contact person for the negotiations.

12. For proposals for a less than complete cleanup indicating the current owners are expected to pay for part of the cleanup, a notarized letter from the current owner accepting status as a PLP and indicating a willingness to negotiate cleanup.

13. Any additional and updated information that has become known since submittal of the initial application.

14. Additional information as requested by Ecology based on the information in the initial application or other information necessary to process the application.

Ecology's Response

Ecology and the Attorney General's office will jointly review the detailed application to determine if there is sufficient basis for negotiations. Acceptance of the application and agreement to enter into negotiations is a discretionary decision by Ecology and the Attorney General. Ecology will notify the applicant of both agencies' decision in writing within 60 days. See WAC 173-340-520(1)(g)&(h). All staff time used to evaluate the proposal shall be paid for

out of the prepayment deposit, whether or not an agreement is successfully reached. If the decision is to reject the application or withdraw from negotiations for substantive reasons or due to resource limitations, the prepayment agreement will be terminated and the unspent deposit returned to the applicant.

Prepared by Pete Kmet, Ecology's Toxics Cleanup Program