



Private Right of Action

The following information is for individuals:

- ❖ Who are either currently doing or planning to do an independent cleanup (remedial) action at a hazardous waste site in Washington State, and
- ❖ Who are intending to recover some of the cleanup costs from others who also contributed to the contamination of the site.

The right to recover cleanup costs from others is known as a Private Right of Action or Private Right of Contribution.

To pursue a Private Right of Action, the individual doing or planning to do the cleanup usually files suit and asks the court to:

1. Allocate cleanup costs (among those responsible for the contamination) for a completed cleanup action, or allocate costs before cleanup begins.
2. Find that the cleanup is or will be the substantial equivalent of a department-conducted or department-supervised cleanup action. This means that the cleanup should be about the same as a cleanup conducted or supervised by the Department of Ecology.

The Substantial Equivalent...

To be the substantial equivalent of an Ecology conducted or supervised cleanup, an independent cleanup action must meet specific criteria in the following four areas:

- ❖ Reporting Requirements;
- ❖ Public Notice;
- ❖ Department Concurrence; and
- ❖ Method of Cleanup.

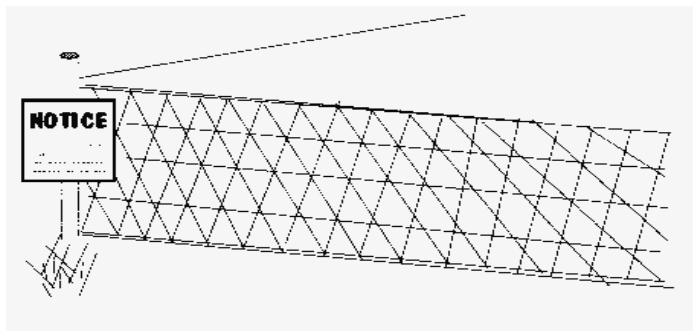
Cleanups done under an order or consent decree automatically qualify as substantially equivalent cleanup actions.

The remainder of this fact sheet provides more specific information on each of the four areas listed above.

Reporting Requirements

Information about the site and any actions done at the site must be reported to Ecology. Guidance on reporting requirements is available from Ecology (see "For More Information" section).

The Model Toxics Control Act and its implementing regulation, Chapter 173-340-545 WAC is intended 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 cleanup actions the department would consider the substantial equivalent of a department-conducted or department-supervised cleanup action.



Public Notice

Advance public notice must be provided.

An individual planning to clean up a site must provide public notice before beginning any cleanup action, unless it's an emergency action.

- ❖ Public notice may be combined with notices under any other law.
- ❖ Public notice requirements apply only to interim actions or cleanup actions after December 25, 1993.
- ❖ For interim actions or cleanup actions prior to December 25, 1993, public notice requirements will be determined on a case-by-case basis.
- ❖ Public notice is not normally required for pre-cleanup activities such as site investigations or studies.

Unless the court determines otherwise, the following actions are adequate for public notice.

1. Send a written notice.

You must send a written notice (at least 15 days before beginning the cleanup action) to the last known address of:

- ❖ The Department of Ecology. Ecology will publish a summary of the notice in its Site Register. Send the notice to: The Site Register, Toxics Cleanup Program, PO Box 47600, Olympia, WA 98504-7600;
- ❖ The local jurisdictional health department/district;
- ❖ The town, city or county with land use jurisdiction;
- ❖ The land owners identified by the tax assessor at the time the action is begun; and
- ❖ Any persons you know of who are potentially liable under RCW 70.105D.040.

In identifying others who may be potentially liable, you need to make a reasonable effort to review information readily available.

If the cleanup action is complex, notifying potentially liable persons prior to beginning detailed design is recommended.

For emergency actions, written notice should be provided as soon as possible.

The notice should include:

- ❖ A brief statement describing the releases being cleaned up and the cleanup actions you expect to conduct.
- ❖ The schedule for these cleanup actions.
- ❖ A statement to potentially liable persons that they could be held liable for the costs of cleanup actions being conducted.

2. Post a sign at the site.

- Post a sign at the site in a visible location to the general public saying:
- a. What cleanup actions are being conducted.
 - b. Who to contact for more information.

Except for emergency actions, the sign should be posted before conducting any cleanup action and should remain posted until the cleanup is complete.

For emergency actions, post a sign as soon as possible.

An independent cleanup is one done without the oversight or direct involvement of the Department of Ecology.

Ecology Must Not Object

Usually Ecology does not become involved with independent cleanups. However, if it does become involved, Ecology must not have objected to the cleanup action at the site or any such objection has been cured as determined by the court.

Method of Cleanup

You should use the technical standards and evaluation criteria contained in the Model Toxics Control Act cleanup regulation, Chapter 173-340 WAC.

Technical standards on the following topics are outlined in the regulation.

- ❖ State remedial investigation and feasibility study
- ❖ Selection of cleanup actions
- ❖ Cleanup actions
- ❖ Compliance monitoring requirements
- ❖ Interim actions
- ❖ Institutional controls
- ❖ Releases from underground storage tanks
- ❖ Cleanup standards
- ❖ General provisions

When using the cleanup regulation to determine substantial equivalence, you should be aware that there are often many alternative methods for cleaning up a site that will meet the definition of substantial equivalence.

TABLE 1. Ecology's Regional Offices

<i>Island, King, San Juan, Skagit, Snohomish, Whatcom</i>	NORTHWEST REGION 3190 - 160th Ave SE Bellevue, WA 98008-5452 (425) 649-7000
<i>Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, Wahkiakum</i>	SOUTHWEST REGION P.O. Box 47775 Olympia, WA 98504-7775 (360) 407-6300
<i>Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima</i>	CENTRAL REGION 15 W Yakima Avenue Suite 200 Yakima, WA 98902-3452 (509) 575-2490
<i>Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman</i>	EASTERN REGION 4601 N Monroe Spokane, WA 99205-1295 (509) 456-2926

The regulation also outlines some of the documents you will need to prepare. The documents do not need to have the same titles or the same format as described in the regulation.

However, they should provide enough information to meet the requirements of the regulation.

Waste Disposal

If cleanup of your site required disposal of hazardous substances you must have documentation available showing that any wastes, contaminated soil, and/or water removed during the cleanup has been properly treated or disposed of.

Documentation can be as simple as providing records that show you disposed of the wastes at a permitted landfill.

For More Information

If you have questions about the information contained in this report, call (360) 407-7170.

If you have questions relating to a specific cleanup site, call the appropriate regional office (see Table 1).

If you have special accommodation needs, call (360) 407-7170 (voice) or 1-800 833-6388 (TTY). Or 711.

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