

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 clean-up 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, multibiennia 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 s 1307; 2020 c 18 s 5. Prior: 2019 c 422 s 401; 2019 c 95 s 3; 2013 2nd sp.s. c 1 s 6; 2009 c 560 s 10; prior: 2007 c 446 s 1; 2007 c 225 s 1; 2007 c 104 s 19; 2002 c 288 s 3; 2001 c 291 s 401; 1997 c 406 s 3; 1995 c 70 s 2; prior: 1994 c 257 s 11; 1994 c 254 s 3; 1989 c 2 s 3 (Initiative Measure No. 97, approved November 8, 1988). Formerly RCW 70.105D.030.]

Reviser's note: This section was amended by 2020 c 18 s 5 and by 2020 c 20 s 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 ss 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.