

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 sixty 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 sixty 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 70.105D RCW; however, the duration of such stay shall not exceed sixty 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 appropriate public participation opportunities under WAC 173-340-600.

(b) If the department and the potentially liable person signing the order agree to substantial changes in the order, the department shall provide appropriate additional public notice and opportunity to comment.

[Statutory Authority: Chapter 70.105D RCW. WSR 01-05-024 (Order 97-09A), § 173-340-530, filed 2/12/01, effective 8/15/01; WSR 96-04-010 (Order 94-37), § 173-340-530, filed 1/26/96, effective 2/26/96; WSR 90-08-086, § 173-340-530, filed 4/3/90, effective 5/4/90.]