

WAC 173-204-540 Types of cleanup and authority. (1) Purpose.

This section describes the authorities and administrative options that may be used to address a release or threatened release of a contaminant to sediment that may pose a threat to human health or the environment. This section also describes the process for selecting an appropriate authority and administrative option.

(2) **Authority.** This part shall apply to a release or threatened release of a contaminant to sediment that may pose a threat to human health or the environment. The department recognizes that such a release may also be addressed under other authorities. The department shall use best professional judgment on a case-by-case basis to determine the appropriate authority for addressing such a release. The department may initiate remedial actions under this part or may determine that another authority is more appropriate. When determining the appropriate authority, the department's decision may include the following considerations:

- (a) Source of contaminants requiring cleanup including spills, dredging actions, and wastewater and/or stormwater discharges;
- (b) Significance of contamination threat to human health and the environment including the degree of contamination and types and number of contaminants;
- (c) Public comments received concerning the contaminant threat to human health and the environment;
- (d) Enforcement compliance history of the landowner(s) and/or discharger(s);
- (e) Status of existing or pending federal, state, or local legal orders or administrative actions; and
- (f) Size of cleanup action proposed or determined necessary.

(3) **Administrative options.** Administrative options used to conduct remedial actions at sites and sediment cleanup units include:

(a) **Department-conducted or supervised remedial actions.** The department may conduct or require others to conduct remedial actions at sites or sediment cleanup units under chapter 70.105D RCW;

(b) **Federal-conducted or supervised remedial actions.** The federal government may conduct or require others to conduct remedial actions at sites or sediment cleanup units pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601 et seq.). When evaluating federal remedial actions, the department shall consider all requirements in this part to be legally applicable requirements under 42 U.S.C. Sec. 9621(d). Federal remedial actions may be considered by the department to meet the requirements of this part provided:

- (i) The remedial actions are consistent with the requirements in this part;
- (ii) The state has concurred with the remedial action; and
- (iii) An opportunity was provided for the public to comment on the remedial action.

(c) **Incidental remedial actions.** Incidental remedial actions may be conducted when other state or federally permitted activities are ongoing in and/or around the site. Early coordination of incidental remedial actions with the department is encouraged to ensure such actions meet the requirements in this part and chapter 70.105D RCW.

[Statutory Authority: Chapter 70.105D RCW. WSR 13-06-014 (Order 08-07), amended and recodified as § 173-204-540, filed 2/25/13, effective 9/1/13. Statutory Authority: Chapters 43.21C, 70.105D, 90.48,

90.52, 90.54 and 90.70 RCW. WSR 91-08-019 (Order 90-41), §
173-204-550, filed 3/27/91, effective 4/27/91.]