

**WAC 173-340-560 Mixed funding.** (1) Introduction. Under RCW 70.105D.070 (2)(d)(xi), the department may provide public funds from the state toxics control account to a potentially liable person for the purpose of assisting with the payment of remedial action costs regardless of when incurred. This assistance can be provided in the form of a loan or a contribution, in cash or in kind. Any funding decision under this section is solely the responsibility of the director.

(2) Applicability and request.

(a) Mixed funding shall be provided only to potentially liable persons whom the department has found to be eligible and who have entered into a consent decree with the department under the requirements of this chapter.

(b) The consent decree shall identify remedial action tasks to be addressed by the mixed funding, costs to be borne by the potentially liable person, costs to be borne by the state toxics control account and terms of the agreement. In the case of loans, the consent decree shall also define any terms and conditions under which the potentially liable person receiving mixed funding has agreed to reimburse the state toxics control account.

(c) The potentially liable person shall submit sufficient documentation to support its request for mixed funding.

(3) Eligibility and mixed funding criteria. The director shall make a determination, based upon specific criteria whether a proposal is eligible for funding. The only circumstances under which mixed funding can be approved by the department are when the funding will achieve both:

(a) A substantially more expeditious or enhanced cleanup than would otherwise occur; and

(b) The prevention or mitigation of unfair economic hardship. In considering this criterion the department shall consider the extent to which mixed funding will either:

(i) Prevent or mitigate unfair economic hardship faced by the potentially liable person if the remedial action plan were to be implemented without public funding; or

(ii) Achieve greater fairness with respect to the payment of remedial action costs between the potentially liable person entering into a consent decree with the department and any nonsettling potentially liable persons.

(4) Funding decision. The department may have informal discussions on mixed funding. If a potentially liable person is found to be eligible for mixed funding, the director shall make a determination regarding the amount of funding to be provided, if any. This shall be determined at the discretion of the director and is not subject to review. A determination of eligibility is not a funding commitment. Actual funding will depend on the availability of funds.

(5) The department may recover the amount of public funding spent on investigations and remedial actions from potentially liable persons who have not entered into a consent decree under this chapter. For purposes of such cost recovery action, the amount in mixed funding attributed to the site shall be considered as remedial action costs paid by the department.

[Statutory Authority: Chapter 70.105D RCW. WSR 90-08-086, § 173-340-560, filed 4/3/90, effective 5/4/90.]