

WAC 173-204-590 Sediment recovery zones. (1) Applicability.

This section specifies requirements governing the establishment and monitoring of sediment recovery zones. Sediment recovery zones are required at sites and sediment cleanup units where:

(a) The department has determined under WAC 173-204-570 that the selected cleanup actions cannot achieve sediment cleanup standards within ten years after completion of construction of the active components of the cleanup action; and

(b) Performance monitoring or a periodic review indicates a cleanup action has not achieved, or is projected to not achieve, sediment cleanup standards within ten years after completion of construction of the active components of the cleanup action.

(2) **General requirements.** A sediment recovery zone shall comply with the following general requirements:

(a) When the department determines during the remedy selection process under WAC 173-204-570 that a sediment recovery zone is necessary, the sediment recovery zone shall be described in the cleanup action plan or other decision document issued under WAC 173-204-575;

(b) When the department determines that a sediment recovery zone is necessary as a result of performance monitoring or a periodic review, the sediment recovery zone shall be described in a new or amended decision document issued under WAC 173-204-575;

(c) Once established, the duration or boundary of a sediment recovery zone may only be adjusted during the periodic review process under WAC 173-204-570(3) or during the renewal of the sediment recovery zone. Any change in the duration or boundary of a sediment recovery zone is subject to public involvement under subsection (7) of this section;

(d) Specific authorization for the sediment recovery zone, any extension, or change to the duration or boundary of that zone, must be provided in an enforceable document (permit, order, consent decree, etc.);

(e) Establishment or expansion of a sediment recovery zone shall not be used as a substitute for active cleanup actions, when such actions are determined to be practicable under WAC 173-204-570;

(f) The areal extent of the sediment recovery zone shall be as small as practicable, as determined under WAC 173-204-570;

(g) The chemical concentrations within the sediment recovery zone shall be as close to the sediment cleanup standard as practicable, as determined under WAC 173-204-570;

(h) Appropriate source control measures shall be implemented to minimize contaminant loading on the sediment recovery zone from ongoing discharges; and

(i) Any authorization for a sediment recovery zone shall identify the legal location and landowners of property proposed as a sediment recovery zone.

(3) **Criteria.** When considering whether to authorize, extend or change a sediment recovery zone, the department shall consider the criteria in subsection (2) of this section and the following factors:

(a) Limitation of any modeling used to project the areal extent and time period needed for the sediment recovery zone;

(b) Potential risks posed by the sediment recovery zone to human health and the environment;

(c) The technical practicability of eliminating or reducing the size and degree of chemical contamination or level of biological and human health effects within the proposed sediment recovery zone as determined under WAC 173-204-570;

(d) Current and potential future use of the sediment recovery zone, surrounding areas, and associate resources that are, or may be, affected by releases from the zone including any aquatic state land use classification under chapter 332-30 WAC; and

(e) The need for institutional controls or other site use restrictions to reduce risks to human health while the sediment recovery zone is in place.

(4) **Duration.** The department may authorize a sediment recovery zone for an initial duration of up to ten years and, upon application by a potentially liable person, authorize extensions in increments not to exceed ten years. When a potentially liable person has made timely and sufficient application, as specified in the authorizing document, for the renewal of a sediment recovery zone, the expiring authorization remains in effect and enforceable until the department either denies the application or reauthorizes the sediment recovery zone.

The areal extent and time period during which a sediment recovery zone is projected to be necessary will be based on the source loading rate and the recovery rate. The source loading rate and recovery rate shall be determined by application of the department's models "CORMIX," "PLUMES," and/or "WASP," or an alternate method approved by the department under WAC 173-204-130(4), as limited by the requirements of this section and the department's best professional judgment.

(5) **Operational terms and conditions.** Operational terms and conditions for the authorized sediment recovery zone shall be maintained at all times. These terms and conditions may include:

(a) Chemical, bioassay, benthic infauna, or tissue monitoring of discharges, receiving water column, organisms, and sediment;

(b) Confirmation of sediment source(s) loading rates, chemical quality and biological toxicity;

(c) Monitoring contaminant bioaccumulation; and

(d) Ongoing evaluation of the water quality, sediment quality, biological conditions, and human health impacts within and adjacent to the proposed or authorized sediment recovery zone.

(6) **Trespass not authorized.** A sediment recovery zone authorization issued by the department under the authority of chapter 70.105D RCW does not constitute authorization to trespass on lands not owned by the applicant. These requirements do not address, and in no way alter, the legal rights, responsibilities, or liabilities of the permittee or landowner of the sediment recovery zone for any applicable requirements of proprietary, real estate, tort, and/or other laws not directly expressed as a requirement of this part.

(7) **Public involvement.** Prior to authorization, the department shall make a reasonable effort to identify and notify all landowners affected by the proposed sediment recovery zone. The department shall issue a sediment recovery zone notification letter to any person it believes to be a potentially affected landowner, the Washington state department of natural resources, the U.S. Army Corps of Engineers, affected port districts, affected tribes, local governments with land use planning authority for the area, and other parties determined appropriate by the department. The notification letter shall be sent by certified mail, return receipt requested, or by personal service. The notification letter shall provide:

(a) The name of the person the department believes to be the affected landowner;

(b) The names of other affected landowners to whom the department has sent a proposed sediment recovery zone notification letter;

(c) The name of the sediment recovery zone applicant;

(d) A general description of the proposed sediment recovery zone, including the chemical(s) of concern by name and concentration, and the area of affected sediment;

(e) The determination of the department concerning whether the proposed sediment recovery zone application meets the requirements of this section;

(f) The intention of the department whether to authorize the proposed sediment recovery zone; and

(g) Invite comments on the proposed sediment recovery zone. Any landowner comments shall be submitted in writing to the department within thirty days from the date of receipt of the notification letter, unless the department provides an extension.

(8) **Enforcement.** The department shall review all data or studies conducted under a sediment recovery zone authorization to ensure compliance with the terms and conditions of the authorization and the requirements of this section. Whenever, in the opinion of the department, the terms and conditions of a sediment recovery zone or the requirements of this section are violated or there is a potential to violate the sediment recovery zone authorization or the requirements of this section, or new information or a reexamination of existing information indicates the sediment recovery zone is no longer appropriate, the department may at its discretion:

(a) Require additional chemical or biological monitoring as necessary;

(b) Revise the sediment recovery zone authorization as necessary to meet the requirements of this section;

(c) Require active contaminated sediment maintenance actions, including additional cleanup in accordance with the standards of WAC 173-204-500 through 173-204-575; and/or

(d) Withdraw the department's authorization of the sediment recovery zone.

[Statutory Authority: Chapter 70.105D RCW. WSR 13-06-014 (Order 08-07), § 173-204-590, filed 2/25/13, effective 9/1/13. Statutory Authority: RCW 90.48.220. WSR 96-02-058, § 173-204-590, filed 12/29/95, effective 1/29/96. Statutory Authority: Chapters 43.21C, 70.105D, 90.48, 90.52, 90.54 and 90.70 RCW. WSR 91-08-019 (Order 90-41), § 173-204-590, filed 3/27/91, effective 4/27/91.]