

WAC 173-340-510 Administrative options for remedial actions. At sites where ecology has determined remedial action is necessary under the state cleanup law, it is the responsibility of each and every liable person to conduct remedial action so that the sites are cleaned up well and expeditiously. This section provides an overview of the administrative options for remedial action and the process for initiating remedial action. If there are any inconsistencies between this section and any specifically referenced sections, the referenced section governs.

(1) **Independent remedial action.** A person may investigate or clean up a site independently, without ecology supervision or approval, except as provided under WAC 173-340-515(2).

(a) **Standards.** When reviewing an independent remedial action, ecology determines whether it complies with the substantive requirements of the state cleanup law. Persons conducting an independent remedial action do so at their own risk. Ecology may require additional remedial action if it determines that such action is necessary under the state cleanup law. See WAC 173-340-515(3).

(b) **Reports.** Persons conducting independent remedial action must report all investigations, interim actions, and cleanup actions to ecology. Reports must include sufficient information for ecology to determine whether the remedial action meets the substantive requirements of the state cleanup law. See WAC 173-340-515(4).

(c) **Technical assistance.** Persons planning or conducting independent remedial action may request technical assistance from ecology, including advice on how to investigate and clean up a site and written opinions on whether a planned or completed remedial action meets the substantive requirements of the state cleanup law. Ecology may charge a fee for providing requested technical assistance. PLIA may also provide technical assistance for certain sites under RCW 70A.330.040(7) and chapter 374-80 WAC.

(2) **Ecology-supervised remedial action.** Ecology may supervise the investigation or cleanup of a site by a potentially liable person or a prospective purchaser under an order or decree. Such persons are encouraged to initiate discussions and negotiations with ecology and the attorney general that may lead to an agreement with the state of Washington on the remedial action to be conducted at a site. Ecology and the state will only approve of remedial action if it is an ecology-supervised remedial action.

(a) **Consent decree.** Ecology and the attorney general may require remedial action as part of a settlement agreement with a potentially liable person or a prospective purchaser. A settlement agreement must be entered as a consent decree issued by a court of competent jurisdiction. See RCW 70A.305.040 (4) and (5), and WAC 173-340-520.

(i) **Settlement.** A consent decree may contain a covenant not to sue and provide protection from contribution claims.

(ii) **Initiation.** Negotiations for a consent decree may be initiated by a potentially liable person, a prospective purchaser, or ecology.

(b) **Agreed order.** Ecology may issue an order requiring remedial action with which a potentially liable person or a prospective purchaser agrees to comply. See RCW 70A.305.020(1), 70A.305.050(1), and 70A.305.040(6) and WAC 173-340-530.

(i) **No settlement.** An agreed order is not a settlement agreement and does not contain a covenant not to sue or provide protection from contributions claims.

(ii) **Initiation.** Discussions for an agreed order may be initiated by a potentially liable person, a prospective purchaser, or ecology.

(c) **Enforcement order.** Ecology may issue an enforcement order requiring a potentially liable person to conduct remedial action. See RCW 70A.305.050(1) and WAC 173-340-540.

(3) **Ecology-conducted remedial action.** Ecology may take appropriate remedial action to investigate or clean up a site at any time. Ecology typically conducts remedial action when a potentially liable person cannot be identified or when such persons are technically or financially unable to conduct remedial action. Ecology may seek to recover its remedial action costs from potentially liable persons. Except for emergency actions and initial investigations, ecology will make a reasonable effort to notify potentially liable persons before conducting remedial action. See RCW 70A.305.030(1) and 70A.305.050(3).

[Statutory Authority: Chapters 70A.305 and 70A.355 RCW. WSR 23-17-159 (Order 18-09), § 173-340-510, filed 8/23/23, effective 1/1/24. Statutory Authority: Chapter 70.105D RCW. WSR 01-05-024 (Order 97-09A), § 173-340-510, filed 2/12/01, effective 8/15/01; WSR 90-08-086, § 173-340-510, filed 4/3/90, effective 5/4/90.]