

WAC 173-340-702 General policies. (1) **Purpose.** This section defines the general policies and principles that shall be followed when establishing and implementing cleanup standards. This section shall be used in combination with other sections of this chapter.

(2) **Policy on expediting cleanups.** Establishing cleanup standards and selecting an appropriate cleanup action involves many technical and public policy decisions. This chapter is intended to constrain the range of decisions made on individual sites to promote expeditious cleanups.

(3) **Goal for cleanups.** The Model Toxics Control Act contains policies that state, in part, each person has a fundamental and inalienable right to a healthful environment and it is essential that sites be cleaned up well. Consistent with these policies, cleanup standards and cleanup actions selected under this chapter shall be established that provide conservative estimates of human health and environmental risks that protect susceptible individuals as well as the general population.

(4) **Current and potential site and resource uses.** Cleanup standards and cleanup actions selected under this chapter shall be established that protect human health and the environment for current and potential future site and resource uses.

(5) **Presumption for cleanup actions.** Cleanup actions that achieve cleanup levels at the applicable point of compliance under Methods A, B, or C (as applicable) and comply with applicable state and federal laws shall be presumed to be protective of human health and the environment.

(6) **Cost considerations.** Except as provided for in applicable state and federal laws, cost shall not be a factor in determining what cleanup level is protective of human health and the environment. In addition, where specifically provided for in this chapter, cost may be appropriate for certain other determinations related to cleanup standards such as point of compliance. Cost shall, however, be considered when selecting an appropriate cleanup action.

(7) **Cleanup action alternatives.** At most sites, there is more than one hazardous substance and more than one pathway for hazardous substances to get into the environment. For many sites there is more than one method of cleanup (cleanup action component) that could address each of these. When evaluating cleanup action alternatives it is appropriate to consider a representative range of cleanup action components that could address each of these as well as different combinations of these components to accomplish the overall site cleanup.

(8) **Cross-media impacts.** The cleanup of a particular medium at a site will often affect other media at the site. These cross-media impacts shall be considered when establishing cleanup standards and selecting a cleanup action. Cleanup actions conducted under this chapter shall use appropriate engineering controls or other measures to minimize these cross-media impacts.

(9) **Relationship between cleanup levels and cleanup actions.** In general, cleanup levels must be met throughout a site before the site will be considered clean. A cleanup action that leaves hazardous substances on a site in excess of cleanup levels may be acceptable as long as the cleanup action complies with WAC 173-340-350 through 173-340-390. However, these rules are intended to promote thorough cleanups rather than long-term partial cleanups or containment measures.

(10) **Relationship to federal cleanup law.** When evaluating cleanup actions performed under the federal cleanup law, the department shall

consider WAC 173-340-350, 173-340-351, 173-340-355, 173-340-357, 173-340-360, 173-340-370, 173-340-410, 173-340-420, 173-340-440, 173-340-450, 173-340-700 through 173-340-760, and 173-340-830 to be legally applicable requirements under Section 121(d) of the federal cleanup law.

(11) **Reviewing and updating cleanup standards.** The department shall review and, as appropriate, update Part 7 of this chapter at least once every five years.

(12) **Applicability of new cleanup levels.**

(a) For cleanup actions conducted by the department, or under an order or decree, the department shall determine the cleanup level that applies to a release based on the rules and analytical methods in effect under this chapter at the time the department issues a final cleanup action plan for that release.

(b) In reviewing the adequacy of independent remedial actions, the department shall determine the cleanup level that applies to a release based on the rules and analytical methods in effect at the time the final cleanup action for that release began or in effect when the department reviews the cleanup action, whichever is less stringent.

(c) A release cleaned up under the cleanup levels determined in (a) or (b) of this subsection shall not be subject to further cleanup action due solely to subsequent amendments to the provisions in this chapter on cleanup levels or subsequent availability of more sensitive analytical methods, unless the department determines, on a case-by-case basis, that the previous cleanup action is no longer sufficiently protective of human health and the environment.

(d) Nothing in this subsection constitutes a settlement or release of liability under the Model Toxics Control Act.

(13) **Institutional controls.** Institutional controls shall be required whenever any of the circumstances identified in WAC 173-340-440(4) are present at a site.

(14) **Burden of proof.** Any person responsible for undertaking a cleanup action under this chapter who proposes to:

(a) Use a reasonable maximum exposure scenario other than the default provided for each medium;

(b) Use assumptions other than the default values provided for in this chapter;

(c) Establish a cleanup level under Method C; or

(d) Use a conditional point of compliance, shall have the burden of demonstrating to the department that requirements in this chapter have been met to ensure protection of human health and the environment. The department shall only approve of such proposals when it determines that this burden of proof is met.

(15) **New scientific information.** The department shall consider new scientific information when establishing cleanup levels and remediation levels for individual sites. In making a determination on how to use this new information, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency. Any proposal to use new scientific information shall meet the quality of information requirements in subsection (16) of this section. To minimize delay in cleanups, any proposal to use new scientific information should be introduced as early in the cleanup process as possible. Proposals to use new scientific information may be considered up to the time of issuance of the final cleanup action plan governing the cleanup action for a site unless triggered as part of a periodic review under WAC 173-340-420 or through a reopener under RCW 70A.305.040 (4)(c).

(16) Criteria for quality of information.

(a) The intent of this subsection is to establish minimum criteria to be considered when evaluating information used by or submitted to the department proposing to modify the default methods or assumptions specified in this chapter or proposing methods or assumptions not specified in this chapter for calculating cleanup levels and remediation levels. This subsection does not establish a burden of proof or alter the burden of proof provided for elsewhere in this chapter.

(b) When deciding whether to approve or require modifications to the default methods or assumptions specified in this chapter for establishing cleanup levels and remediation levels or when deciding whether to approve or require alternative or additional methods or assumptions, the department shall consider information submitted by all interested persons and the quality of that information. When evaluating the quality of the information the department shall consider the following factors, as appropriate for the type of information submitted:

(i) Whether the information is based on a theory or technique that has widespread acceptance within the relevant scientific community;

(ii) Whether the information was derived using standard testing methods or other widely accepted scientific methods;

(iii) Whether a review of relevant available information, both in support of and not in support of the proposed modification, has been provided along with the rationale explaining the reasons for the proposed modification;

(iv) Whether the assumptions used in applying the information to the facility are valid and would ensure the proposed modification would err on behalf of protection of human health and the environment;

(v) Whether the information adequately addresses populations that are more highly exposed than the population as a whole and are reasonably likely to be present at the site; and

(vi) Whether adequate quality assurance and quality control procedures have been used, any significant anomalies are adequately explained, the limitations of the information are identified, and the known or potential rate of error is acceptable.

[Statutory Authority: Chapters 70A.305 and 70A.355 RCW. WSR 23-17-159 (Order 18-09), § 173-340-702, filed 8/23/23, effective 1/1/24. Statutory Authority: Chapter 70.105D RCW. WSR 01-05-024 (Order 97-09A), § 173-340-702, filed 2/12/01, effective 8/15/01; WSR 91-04-019, § 173-340-702, filed 1/28/91, effective 2/28/91.]