

WAC 173-340-310 Initial investigation. (1) **Purpose.** The purpose of the initial investigation is to determine:

(a) Whether there has been a release or threatened release of a hazardous substance to the environment;

(b) Whether the release or threatened release may pose a threat to human health or the environment;

(c) Whether the population that may be threatened includes a likely vulnerable population or overburdened community;

(d) Whether further remedial action is necessary under state cleanup law to confirm whether there has been a release or threatened release that poses a threat to human health or the environment;

(e) Whether further remedial action is necessary under state cleanup law to address the threat to human health and the environment posed by the release or threatened release. This determination is based on the criteria in WAC 173-340-330(5);

(f) Whether an emergency remedial action or an interim action is necessary under state cleanup law to address the threat, and whether persons in the potentially affected vicinity need to be notified of such action;

(g) Whether action under another state or federal law is appropriate; and

(h) The current owners and operators of the site.

(2) **Applicability.** Ecology will complete an initial investigation unless:

(a) The release is exempt from reporting under WAC 173-340-300 (2) (a);

(b) The circumstances associated with the release or threatened release are known to ecology and have previously been or currently are being evaluated by ecology or another government agency; or

(c) Ecology does not have a reasonable basis to believe that there has been a release or threatened release of a hazardous substance that may pose a threat to human health or the environment.

(3) **Performance.** To make the determinations specified in subsection (1) of this section, ecology will review readily available information and may collect, or request other persons to collect, additional information.

(4) **Reliance on others.** Ecology may rely on another government agency or a contractor to ecology to conduct an initial investigation on its behalf, provided:

(a) The agency or contractor is not suspected of having contributed to the release or threatened release; and

(b) The agency or contractor has no conflict of interest.

(5) **Timing.**

(a) Except as provided under (b) of this subsection, ecology will complete an initial investigation within 90 days of discovering a release or threatened release or receiving a release report under WAC 173-340-300.

(b) If an independent investigation, interim action, or cleanup action is completed within 90 days of the discovery of a release or threatened release, ecology will complete an initial investigation by the earlier of the following:

(i) Ninety days after receiving the independent remedial action report required under WAC 173-340-515(4); or

(ii) One hundred eighty days after discovering a release or threatened release or receiving a release report.

(6) **Determinations and next steps.** Within 30 days of completing the initial investigation, ecology will make one of the following determinations and take the applicable steps:

(a) No release or threatened release occurred. In this case, ecology will notify the owner and operator in writing of its determination;

(b) A release or threatened release occurred, but does not pose a threat to human health or the environment that requires remedial action under state cleanup law. This determination must be based on factors other than performance of remedial action. In this case, ecology will notify the owner and operator in writing of its determination;

(c) A release or threatened release occurred that posed a threat to human health or the environment, but no further remedial action is necessary under state cleanup law to address that threat based on the criteria in WAC 173-340-330(5). In this case, ecology will take the following steps:

(i) Perform a site hazard assessment and ranking in accordance with WAC 173-340-320;

(ii) List the site on ecology's no further action sites list in accordance with WAC 173-340-335(2);

(iii) Make any initial investigation report publicly available on ecology's website;

(iv) Notify the owner and operator in writing of ecology's determination; and

(v) Notify the public of ecology's determination in the *Contaminated Site Register* under WAC 173-340-600(7). The notice must include instructions on how to sign up for the site-specific electronic alerts provided by ecology under WAC 173-340-600(6);

(d) A release or threatened release may have occurred that poses a threat to human health or the environment, and further remedial action is necessary under state cleanup law to confirm the threat. In this case, ecology will take the steps specified under (e) of this subsection;

(e) A release or threatened release occurred that poses a threat to human health or the environment, and further remedial action is necessary under state cleanup law to address the threat based on the criteria in WAC 173-340-330(5). In this case, ecology will take the following steps:

(i) Perform a site hazard assessment and ranking in accordance with WAC 173-340-320;

(ii) List the site on the contaminated sites list in accordance with WAC 173-340-330(2);

(iii) Make any initial investigation report publicly available on ecology's website;

(iv) Notify the owner and operator, and any person who ecology has preliminarily determined to be liable under WAC 173-340-500(1), in writing of ecology's determination. The notice may be combined with the potentially liable person status letter in WAC 173-340-500. The notice must include:

(A) The basis for ecology's determination;

(B) The site's hazard rankings;

(C) Information on the cleanup process provided for in this chapter;

(D) A statement that it is ecology's policy to work cooperatively with persons to accomplish prompt and effective cleanups;

(E) A statement that the notice is not a determination of liability and that cooperating with ecology in planning or conducting a remedial action is not an admission of guilt or liability;

(F) An ecology website where information about the site is publicly available, and instructions on how to sign up for the site-specific electronic alerts provided by ecology under WAC 173-340-600(6); and

(G) An ecology staff or office to contact about the contents of the notice;

(v) Notify the public of ecology's determination in the *Contaminated Site Register* under WAC 173-340-600(7). The notice must include instructions on how to sign up for the site-specific electronic alerts provided by ecology under WAC 173-340-600(6);

(vi) Notify persons within the potentially affected vicinity of the threat, if ecology determines that an emergency remedial action or an interim action is necessary under state cleanup law and that such notice is needed.

(A) Ecology may require the owner or operator to provide the notice on ecology's behalf. If required in writing by ecology, the owner or operator must provide the notice.

(B) Ecology will determine the method and nature of the notice on a case-by-case basis using the methods specified in WAC 173-340-600.

(f) A release or threatened release occurred that poses a threat to human health or the environment, but action under another state or federal law is appropriate. The steps ecology will take depend on the other authority identified by ecology.

(i) For all sites where ecology determines action is appropriate under another state or federal law, ecology will:

(A) Refer the site to the applicable government agency or program; and

(B) Notify the owner and operator in writing of its determination.

(ii) For sites where ecology determines action is appropriate under the federal cleanup law, the federal Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the state Hazardous Waste Management Act (chapter 70A.300 RCW), the state Solid Waste Management Act (chapter 70A.205 RCW), or the state Pollution Liability Protection Act (chapter 70A.330 RCW), ecology will also:

(A) Perform a site hazard assessment and ranking in accordance with WAC 173-340-320;

(B) List the site on ecology's contaminated sites list in accordance with WAC 173-340-330(2);

(C) Make any initial investigation report publicly available on ecology's website; and

(D) Notify the public of ecology's determination in the *Contaminated Site Register* under WAC 173-340-600(7). The notice must include instructions on how to sign up for the site-specific electronic alerts provided by ecology under WAC 173-340-600(6).

(7) **Reservation of rights.** Nothing in this section precludes ecology from taking or requiring appropriate remedial action at any time.

[Statutory Authority: Chapters 70A.305 and 70A.355 RCW. WSR 23-17-159 (Order 18-09), § 173-340-310, filed 8/23/23, effective 1/1/24. Statutory Authority: Chapter 70.105D RCW. WSR 01-05-024 (Order 97-09A), § 173-340-310, filed 2/12/01, effective 8/15/01; WSR 90-08-086, § 173-340-310, filed 4/3/90, effective 5/4/90.]