

**WAC 173-340-515 Independent remedial actions.** (1) **Purpose.** An independent remedial action is a remedial action conducted without department oversight or approval and not under an order, agreed order or consent decree. This section describes the procedures and requirements for independent remedial actions. See WAC 173-340-545 for additional requirements pertaining to independent remedial actions anticipated to be part of a private right of action.

(2) **Applicability.** Nothing in this chapter shall preclude potentially liable persons from conducting independent remedial actions at sites not in discussions or negotiations for, or under, an order or decree. However, a potentially liable person may not conduct independent remedial actions after commencing discussions or negotiations for an agreed order or consent decree unless:

(a) Such action does not foreclose or preempt the remedial actions under discussion or negotiation and such action does not foreclose the selection of a cleanup action; or

(b) The potentially liable person has provided reasonable notice to the department and the department does not object to such action.

(3) **Standards.**

(a) In reviewing independent remedial actions, the department shall determine whether the remedial actions meet the substantive requirements of the state cleanup law and/or whether further remedial action is necessary at the site. Persons conducting independent remedial actions do so at their own risk, and may be required to take additional remedial actions if the department determines such actions are necessary. In such circumstances, the department reserves all of its rights to take actions authorized by law.

(b) When this chapter requires a consultation with, or an approval or determination by the department, such a consultation, approval or determination is not necessary in order to conduct an independent remedial action. However, independent remedial actions must still meet the substantive requirements of the state cleanup law.

(c) Except for the requirement of a restrictive covenant under WAC 173-340-440, where documents are required under the state cleanup law, the documents prepared need not be the same in title or format; however, the documents must still contain sufficient information to serve the same purpose. The scope and level of detail in these documents may vary from site to site depending on the site-specific conditions and the complexity of the remedial action.

(4) **Reports to the department.**

(a) **Applicability and timing.**

(i) **Investigations.** Any person who conducts an independent investigation of a release required to be reported under WAC 173-340-300 must submit a written report to the department within 90 days of the completion of the investigation. For the purposes of this subsection:

(A) An investigation is any remedial action conducted as part of a remedial investigation of the site under WAC 173-340-350; and

(B) An investigation is complete if no remedial action other than compliance monitoring has occurred at the site for 90 days. This means that an investigation may need to be reported separately from an interim action or cleanup action and that an individual investigation may need to be reported separately from other investigations of the site.

(ii) **Interim actions and cleanup actions.** Any person who conducts an independent interim action or cleanup action for a release required to be reported under WAC 173-340-300 must submit a written report to the department within 90 days of the completion of the action. For the

purposes of this subsection, an interim action or cleanup action is complete if no remedial action other than compliance monitoring has occurred at the site for 90 days.

(iii) **Releases from regulated UST systems.** For releases from UST systems regulated under chapter 173-360A WAC, see WAC 173-340-450 for additional requirements for reporting independent remedial actions.

(b) **Content.** An independent remedial action report must include the information in WAC 173-340-300(3) if not already reported, and enough information to determine if the remedial action meets the substantive requirements of the state cleanup law, including the results of all site investigations, feasibility studies, interim actions, cleanup actions, and compliance monitoring planned or under way. Previously reported information may be summarized and referenced to avoid unnecessary duplication. The report must comply with the requirements in WAC 173-340-840. If a restrictive covenant is used, it must be included in the report and it must meet the requirements specified in WAC 173-340-440(9). The department may require additional reports on the work conducted.

(c) **Initial investigation.** If the independent investigation, interim action, or cleanup action is completed within 90 days of release discovery, the department may defer completing any needed initial investigation of the release to enable review of the independent remedial action and report in accordance with WAC 173-340-310 (5)(b).

(d) **Notification.** The department will notify the public of an independent investigation, interim action, or cleanup action report received under this section in accordance with WAC 173-340-600(20).

(e) **Liability.** Neither submission of information on an independent remedial action nor any response by the department shall release the person submitting the report or any other person from liability. The department reserves all rights to pursue any subsequent action it deems appropriate.

(5) **Technical consultations.** The department may provide informal advice and assistance (technical consultations) on the administrative and technical requirements of the state cleanup law to persons conducting or otherwise interested in an independent remedial action. Such advice or assistance is advisory only and not binding on the department. This advice may include written opinions. These written opinions shall be limited to whether the independent remedial actions or proposals for those actions meet the substantive requirements of the state cleanup law and/or whether the department believes further remedial action is necessary at the site.

(a) Upon completing the review of an independent remedial action report or proposal that is voluntarily submitted for the department's review and opinion, the department will:

(i) Provide a written opinion regarding the remedial actions performed or proposed at the site;

(ii) Provide a written opinion regarding the remedial actions performed at the site and remove the site from the contaminated sites list if the department has sufficient information to show that the independent remedial actions are appropriate to characterize and address contamination at the site, as specified in WAC 173-340-330 (5); or

(iii) Provide a written opinion describing the deficiencies with the remedial action or proposal for a remedial action at the site.

(b) It is the department's policy, in conducting reviews under this subsection, to promote independent remedial actions by delisting sites whenever petitions and supporting documents show that the ac-

tions taken are appropriate to characterize and address the contamination at the site.

(c) The department will notify the public of a written opinion issued under this subsection in accordance with WAC 173-340-600(20).

(6) **Cost of technical consultations.** For information on the payment of remedial action costs, see WAC 173-340-550(6).

[Statutory Authority: Chapters 70A.305 and 70A.355 RCW. WSR 23-17-159 (Order 18-09), § 173-340-515, filed 8/23/23, effective 1/1/24. Statutory Authority: Chapter 70.105D RCW. WSR 01-05-024 (Order 97-09A), § 173-340-515, filed 2/12/01, effective 8/15/01.]