

Chapter 173-322A WAC
REMEDIAL ACTION GRANTS AND LOANS

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WAC

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WAC 173-322A-010 Purpose and authority. (1) This chapter recognizes that:

(a) The state contains thousands of hazardous waste sites that present serious threats to human health and the environment, including the state's water resources;

(b) Many of these hazardous waste sites, such as landfills and port facilities, are owned or operated by local governments;

(c) Many of the properties affected by these hazardous waste sites are brownfield properties, where economic development and other community reuse objectives are hindered by the presence of contamination; and

(d) The cost of cleaning up these hazardous waste sites in many cases is beyond the financial means of local governments and ratepayers.

(2) This chapter establishes requirements for a program of grants and loans to local governments for remedial action pursuant to RCW 70.105D.070 (4) and (8).

(3) The purpose of the remedial action grants and loans program established by this chapter is to expedite the cleanup and redevelopment of hazardous waste sites and to lessen the impact of the cleanup on ratepayers and taxpayers. The remedial action grants and loans shall be used to supplement local government funding and funding from other sources to carry out remedial actions.

[Statutory Authority: Chapter 70.105D RCW. WSR 14-18-060 (Order 13-09), § 173-322A-010, filed 8/29/14, effective 9/29/14.]

WAC 173-322A-020 Relation to other laws and rules. (1) Nothing in this chapter shall influence, affect, or modify department programs, regulations, or enforcement of applicable laws relating to hazardous waste site investigation and cleanup.

(2) Nothing in this chapter shall modify the order or decree the department has secured with potentially liable persons or prospective purchasers for remedial action. The execution of remedial actions pursuant to the order or decree shall in no way be contingent upon the availability of grant funding.

(3) All grants and loans shall be subject to existing accounting and auditing requirements of state laws and regulations applicable to the issuance of grants and loans.

[Statutory Authority: Chapter 70.105D RCW. WSR 14-18-060 (Order 13-09), § 173-322A-020, filed 8/29/14, effective 9/29/14.]

WAC 173-322A-100 Definitions. Unless otherwise defined in this chapter, words and phrases used in this chapter shall be defined according to WAC 173-340-200 and 173-204-505.

(1) "**Agreement signature date**" means, for the purposes of grant and loan agreements, the date the agreement document is signed by the department.

(2) "**Applicant**" means a local government that applies for a grant or loan.

(3) "**Area-wide groundwater contamination**" means groundwater contamination on multiple adjacent properties with different ownerships consisting of hazardous substances from multiple sources that have resulted in commingled plumes of contaminated groundwater that are not practicable to address separately.

(4) "**Average market rate**" means the average market rate for tax-exempt general obligation municipal bonds for the month of June preceding the agreement signature date, as determined using rates published by *Bond Buyer*.

(5) "**Biennium**" means the twenty-four-month fiscal period extending from July 1st of odd-numbered years to June 30th of odd-numbered years.

(6) "**Brownfield property**" means previously developed and currently abandoned or underutilized real property and adjacent surface waters and sediment where environmental, economic, or community reuse objectives are hindered by the release or threatened release of hazardous substances that the department has determined requires remedial action under this chapter or that the United States Environmental Protection Agency has determined requires remedial action under the federal cleanup law.

(7) "**Budget**" means, for the purpose of grant and loan agreements, a breakdown of eligible costs by task.

(8) "**Cleanup action**" means the term as defined in WAC 173-340-200 or 173-204-505.

(9) "**Construction completion**" means physical construction of a cleanup action component is complete.

(10) "**Coordinated water system plan**" means a plan for public water systems within a critical water supply service area which identifies the present and future water system concerns and sets forth a means for meeting those concerns in the most efficient manner possible pursuant to chapter 246-293 WAC.

(11) "**Decree**" or "**consent decree**" means a consent decree issued under chapter 70.105D RCW or the federal cleanup law.

(12) "**Department**" means the department of ecology.

(13) "**Department share**" means the department's share of eligible costs.

(14) "**Director**" means the director of the department of ecology.

(15) "**Economically disadvantaged county**" means a county whose per capita income is equal to or below the median per capita income of counties in Washington state, as determined on July 1st of each odd-numbered year using the latest official American Community Survey five-year estimates of the U.S. Department of Commerce.

(16) "**Economically disadvantaged city or town**" means a city or town whose per capita income is equal to or below the median per capi-

ta income of cities and towns in Washington state, as determined on July 1st of each odd-numbered year using the latest official American Community Survey five-year estimates of the U.S. Department of Commerce.

(17) "**Eligible cost**" means a project cost that is eligible for funding under this chapter and the terms of the grant or loan agreement.

(18) "**Extended grant agreement**" means a grant agreement entered into under RCW 70.105D.070 (4) (e) (i).

(19) "**Feasibility study**" means the term as defined in chapter 173-340 or 173-204 WAC.

(20) "**Federal cleanup law**" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq.

(21) "**Grant agreement**" means a binding agreement between the local government and the department that authorizes the disbursement of funds to the local government to reimburse it for a portion of expenditures in support of a specified scope of services.

(22) "**Hazardous substances**" means any hazardous substance as defined in WAC 173-340-200.

(23) "**Hazardous waste site**" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action.

(24) "**Highly impacted community**" means a community that the department has determined is likely to bear a disproportionate burden of public health risks from environmental pollution.

(25) "**Independent remedial actions**" means remedial actions conducted without department oversight or approval and not under an order or consent decree.

(26) "**Initial investigation**" means a remedial action that consists of an investigation under WAC 173-340-310.

(27) "**In-kind contributions**" means property or services that benefit a project and are contributed to the recipient by a third party without direct monetary compensation. In-kind contributions include interlocal costs, donated or loaned real or personal property, volunteer services, and employee services donated by a third party.

(28) "**Innovative technology**" means new technologies that have been demonstrated to be technically feasible under certain site conditions, but have not been widely used under the conditions that exist at the hazardous waste site. Innovative technology has limited performance and cost data available.

(29) "**Interim action**" means a remedial action conducted under WAC 173-340-430.

(30) "**Loan agreement**" means a binding agreement between the local government and the department that authorizes the disbursement of funds to the local government that must be repaid. The loan agreement includes terms such as interest rates and repayment schedule, scope of work, performance schedule, and project budget.

(31) "**Local government**" means any political subdivision of the state, including a town, city, county, special purpose district, or other municipal corporation, including brownfield renewal authority created under RCW 70.105D.160.

(32) "**No further action determination**" or "**NFA determination**" means a written opinion issued by the department under WAC 173-340-515(5) that the independent remedial actions performed at a hazardous waste site or property meet the substantive requirements of

chapter 173-340 WAC and that no further remedial action is required at the hazardous waste site or property. The opinion is advisory only and not binding on the department.

(33) "**Order**" means an order issued under chapter 70.105D RCW, including enforcement orders issued under WAC 173-340-540 and agreed orders issued under WAC 173-340-530, or an order issued under the federal cleanup law, including unilateral administrative orders (UAO) and administrative orders on consent (AOC).

(34) "**Oversight remedial actions**" means remedial actions conducted under an order or decree.

(35) "**Partial funding**" means funding less than the maximum department share allowed under this chapter.

(36) "**Potentially liable person**" or "**PLP**" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040.

(37) "**Potentially responsible party**" or "**PRP**" means "covered persons" as defined under section 9607 (a)(1) through (4) of the federal cleanup law (42 U.S.C. Sec. 9607(a)).

(38) "**Property**" means, for the purposes of independent remedial action grants, the parcel or parcels of real property affected by a hazardous waste site and addressed as part of the independent remedial action.

(39) "**Prospective purchaser**" means a person who is not currently liable for remedial action at a facility and who proposes to purchase, redevelop, or reuse the facility.

(40) "**Public water system**" means a Group A water system as defined in WAC 246-290-020.

(41) "**Purveyor**" means an agency or subdivision of the state or a municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity that owns or operates a public water system, or the authorized agent of such entities.

(42) "**Recipient**" means a local government that has been approved to receive a grant or loan.

(43) "**Recipient share**" or "**match**" means the recipient's share of eligible costs.

(44) "**Redevelopment opportunity zone**" means a geographic area designated under RCW 70.105D.150.

(45) "**Remedial action**" means any action or expenditure consistent with the purposes of chapter 70.105D RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(46) "**Remedial investigation**" means the term as defined in chapter 173-340 or 173-204 WAC.

(47) "**Retroactive costs**" means costs incurred before the agreement signature date.

(48) "**Safe drinking water**" means water meeting drinking water quality standards set by chapter 246-290 WAC.

(49) "**Scope of work**" means the tasks and deliverables of the grant or loan agreement.

(50) "**Site**" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or

aircraft; or any site or area where a hazardous substance, other than a legal consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(51) **"Site hazard assessment"** means a remedial action that consists of an investigation performed under WAC 173-340-320.

(52) **"Voluntary cleanup program"** means the program authorized under RCW 70.105D.030 (1)(i) and WAC 173-340-515.

[Statutory Authority: Chapter 70.105D RCW. WSR 14-18-060 (Order 13-09), § 173-322A-100, filed 8/29/14, effective 9/29/14.]

WAC 173-322A-200 Funding cycle. (1) **Project solicitation.** Biennially, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. The department may update its ten-year financing plan as needed during the biennium. Project proposals for each type of grant or loan must be submitted on forms provided by the department and include sufficient information to make the determinations in subsection (3) of this section. For multibiennial oversight remedial action grant projects, proposals must be updated biennially. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals and updates should be submitted by the dates published by the department.

(2) **Application submittal.** Applications for each type of grant or loan must be submitted on forms provided by the department and include sufficient information to make the determinations in subsections (3) and (4) of this section. For multibiennial oversight remedial action grant projects, an application must be submitted before each biennium for which additional funds are requested. Completed applications should be submitted by the dates published by the department.

(3) **Project evaluation and ranking.** Project proposals and applications for each type of grant or loan will be reviewed by the department for completeness and evaluated to determine:

(a) Project eligibility; and

(b) Funding priority under WAC 173-322A-210.

(4) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund an eligible project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

(a) Funding priority under WAC 173-322A-210;

(b) Cost eligibility;

(c) Allowable funding of eligible costs; and

(d) Availability of state funds and other funding sources.

(5) **Fund management.** The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.

[Statutory Authority: Chapter 70.105D RCW. WSR 14-18-060 (Order 13-09), § 173-322A-200, filed 8/29/14, effective 9/29/14.]

WAC 173-322A-210 Funding priorities. (1) **Among types of grants and loans.** The department will fund remedial action grants and loans in the following order of priority:

(a) Oversight remedial action grants and loans under an existing extended grant agreement;

(b) Site assessment grants and other remedial action grants and loans for previously funded projects, provided that substantial progress has been made; and

(c) Remedial action grants and loans for new projects.

(2) **For each type of grant or loan.** For each type of remedial action grant or loan, the department will further prioritize projects for funding or limit funding for projects based on the factors specified in WAC 173-322A-300 through 173-322A-350, as applicable.

(3) **Oversight remedial action loans.** The department will fund an oversight remedial action loan from the same fund allocation used to fund the associated oversight remedial action grant. When the demand for funds exceeds the amount allocated, the department will give the oversight remedial action grant and loan the same priority.

[Statutory Authority: Chapter 70.105D RCW. WSR 14-18-060 (Order 13-09), § 173-322A-210, filed 8/29/14, effective 9/29/14.]

WAC 173-322A-220 Fiscal controls. (1) **General.** The department will establish reasonable costs for all grants and loans, require local governments to manage projects in a cost-effective manner, and ensure that all potentially liable persons assume responsibility for remedial action.

(2) **Funding discretion.** The department retains the discretion to not provide a grant or loan for an eligible project or to provide less funding for an eligible project than the maximum allowed under this chapter.

(3) **Funding limits.** The department may not provide more funding for an eligible project than the maximum allowed under this chapter for each type of grant or loan.

(4) **Retroactive funding.** Retroactive costs are not eligible for funding, except as provided under this chapter for each type of grant or loan.

(5) **Cash management of grants.** For oversight remedial action grants, the department may not:

(a) Allocate more funds for a project each biennium than are estimated to be necessary to complete the scope of work for that biennium. The biennial scope of work must be approved by the department; or

(b) Allocate more funds for a project unless the local government has demonstrated to the department that funds awarded during the previous biennium have been substantially expended or contracts have been entered into to substantially expend the funds.

(6) **Consideration of insurance, contribution, and cost recovery claims.** A recipient may use proceeds from an insurance claim or a contribution or cost recovery claim under RCW 70.105D.080 or the federal cleanup law seeking recovery of remedial action costs at a hazardous waste site to meet recipient share requirements, subject to the conditions in (a) through (f) of this subsection.

(a) **Applicability.** The project at the hazardous waste site is currently funded on or will be funded after July 1, 2014, under a grant agreement.

(b) **Notice of claims.** Upon application for the grant or within thirty days of filing a lawsuit or insurance claim to recover remedial action costs at the hazardous waste site, whichever is later, the recipient must notify the department of the filing.

(c) **Notice of proceeds.** Upon application for the grant, the recipient must notify the department of the total amount of proceeds received to date on any claims for remedial action costs at the hazardous waste site. The department may require the recipient to periodically update the total amount of proceeds received on the claims. The department may also require the recipient to provide documentation of the proceeds received on the claims.

(d) **Notice of resolution.** Upon application for the grant or within thirty days of any resolution of a claim for remedial action costs at the hazardous waste site, whichever is later, the recipient must:

(i) Notify the department of the resolution;

(ii) Specify the amount of proceeds received under the resolution and the portion of the proceeds attributable to eligible costs; and

(iii) Provide the department a copy of the settlement, judgment, or other document resolving the claim or portion of the claim.

(e) **Repayment of grant funds.** If the total proceeds from all the claims for remedial action costs at a hazardous waste site exceed the following costs, then the department may reduce the department share or require repayment of costs reimbursed by the department under a grant agreement by up to the amount of the exceedance:

(i) The cost incurred by the recipient to pursue the claims;

(ii) The cost of remedial actions incurred by the recipient that are not funded by the department at the hazardous waste site, including costs incurred before resolution of the claims; and

(iii) If approved by the department, the cost of remedial actions incurred by the recipient that are not funded by the department for an eligible project at a hazardous waste site that is not the basis for the claims.

(f) **Eligibility of payments to other recipients.** Contribution and cost recovery claim payments are not eligible costs if the payments are made for remedial actions previously funded by a grant to another jurisdiction.

(7) **Reimbursement request deadlines.**

(a) Requests for reimbursement and adequate documentation of eligible retroactive costs incurred before the application date must be submitted to the department in the application.

(b) Requests for reimbursement and adequate documentation of eligible retroactive costs incurred between the application date and the agreement signature date must be submitted to the department within ninety days of the agreement signature date.

(c) Requests for reimbursement and adequate documentation of eligible costs incurred after the agreement signature date must be submitted to the department within one hundred twenty days of incurring the costs.

(d) If requests for reimbursement are not submitted by the deadlines in (a) through (c) of this subsection, as applicable, the department may deny reimbursement of the costs.

(8) **Spending plans for grant or loan agreements.** The department may require grant or loan recipients to provide and periodically update a spending plan for the grant or loan.

(9) **Financial responsibility.** As established by the Model Toxics Control Act, chapter 70.105D RCW, and implementing regulations, potentially liable persons bear financial responsibility for remedial action costs. The remedial action grant and loan programs may not be used to circumvent the responsibility of a potentially liable person. Remedial action grants and loans shall be used to supplement local

government funding and funding from other sources to carry out required remedial action.

(10) **Puget Sound action agenda.** The department may not fund projects designed to address the restoration of Puget Sound that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

[Statutory Authority: Chapter 70.105D RCW. WSR 14-18-060 (Order 13-09), § 173-322A-220, filed 8/29/14, effective 9/29/14.]

WAC 173-322A-300 Site assessment grants. (1) **Purpose.** The purpose of site assessment grants is to provide funding to local governments that conduct initial investigations and site hazard assessments on behalf of the department. The department retains the authority to review and verify results and make determinations based on the initial investigations and site hazard assessments conducted by local governments.

(2) **Project eligibility.** To be eligible for a site assessment grant, a project must meet all of the following requirements:

(a) The applicant must be a local health district or department;

(b) The department has agreed the applicant may conduct initial investigations or site hazard assessments on its behalf; and

(c) The scope of work for initial investigations and site hazard assessments must conform to WAC 173-340-310 and 173-340-320 and applicable department guidelines.

(3) **Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

(a) The need for initial investigations or site hazard assessments within the jurisdiction of the applicant, as determined by the department;

(b) The population within the jurisdiction of the applicant; and

(c) The performance of the applicant under prior site assessment grant agreements.

(4) **Application process.**

(a) **Project solicitation.** Biennially, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. The department may update its ten-year financing plan as needed during the biennium. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

(i) Project eligibility under subsection (2) of this section; and

(ii) Funding priority under subsection (3) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund an eligible project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

(i) Funding priority under subsection (3) of this section;

(ii) Cost eligibility under subsections (5) and (6) of this section;

(iii) Allowable funding under subsection (7) of this section; and

(iv) Availability of state funds and other funding sources.

(e) **Fund management.** The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.

(5) **Cost eligibility.** To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

(a) **Eligible costs.** Eligible costs for a site assessment grant include reasonable costs for the following:

(i) Initial investigations under WAC 173-340-310;

(ii) Site hazard assessments under WAC 173-340-320; and

(iii) Administrative or technical support for initial investigations or site hazard assessments performed by the department.

(b) **Ineligible costs.** Ineligible costs for a site assessment grant include, but are not limited to, the following:

(i) The cost of developing the grant application or negotiating the grant agreement;

(ii) The cost of dispute resolution under the grant agreement;

(iii) Retroactive costs, except as provided under subsection (6) of this section;

(iv) Legal costs including, but not limited to, the cost of seeking legal advice, pursuing cost recovery, contribution, or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, defending actions taken against the recipient, penalties incurred by the recipient, and any attorney fees incurred by the recipient;

(v) The cost of testing buildings and other structures for drug use residuals;

(vi) The cost of testing buildings and other structures for radon, lead paint, or asbestos that is not required as a remedial action under chapter 70.105D RCW or the federal cleanup law; and

(vii) In-kind contributions.

(6) **Retroactive cost eligibility.** Retroactive costs are eligible for funding if the costs are incurred between the start of the biennium and the agreement signature date and are eligible under subsection (5) of this section.

(7) **Funding of eligible costs.**

(a) **Department share.** The department may fund up to one hundred percent of the eligible costs.

(b) **Recipient share.** The recipient shall fund the percentage of the eligible costs not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

[Statutory Authority: Chapter 70.105D RCW. WSR 14-18-060 (Order 13-09), § 173-322A-300, filed 8/29/14, effective 9/29/14.]

WAC 173-322A-310 Integrated planning grants. (1) **Purpose.** The purpose of integrated planning grants is to provide funding to local governments to conduct assessments of brownfield properties and develop integrated projects plans for their cleanup and adaptive reuse. The grants are intended to encourage and expedite the cleanup of brownfield properties and to lessen the impact of the cleanup cost on ratepayers and taxpayers.

(2) **Project eligibility.** For the purposes of this grant, a project consists of integrated planning for a single hazardous waste site or for an area affected by multiple hazardous waste sites. A project may extend over more than one biennium. To be eligible for a grant, the project must meet the following requirements:

(a) The applicant must be a local government;

(b) The applicant must have an ownership interest in property or have a demonstrated interest in purchasing property affected by the hazardous waste site;

(c) The applicant must have the necessary access to complete the project or obtain such access in accordance with the schedule in the grant agreement; and

(d) The applicant must not be required to conduct the actions under an order or decree.

(3) **Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

(a) The threat posed by the hazardous waste site to human health and the environment;

(b) Whether the hazardous waste site is within a redevelopment opportunity zone;

(c) The land reuse potential of the hazardous waste site;

(d) Whether the hazardous waste site is located within a highly impacted community;

(e) The readiness of the applicant to start and complete the work to be funded by the grant and the performance of the applicant under prior grant agreements;

(f) The ability of the grant to expedite the cleanup of the hazardous waste site;

(g) The ability of the grant to leverage other public or private funding for the cleanup and reuse of the hazardous waste site;

(h) The distribution of grants throughout the state and to various types and sizes of local governments; and

(i) Other factors as determined and published by the department.

(4) **Application process.**

(a) **Project solicitation.** Biennially, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. The department may update its ten-year financing plan as needed during the biennium. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

- (i) Project eligibility under subsection (2) of this section; and
- (ii) Funding priority under subsection (3) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund an eligible project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

- (i) Funding priority under subsection (3) of this section;
- (ii) Cost eligibility under subsections (5) and (6) of this section;
- (iii) Allowable funding under subsections (7) and (8) of this section; and
- (iv) Availability of state funds and other funding sources.

(e) **Fund management.** The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.

(5) **Cost eligibility.** To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

(a) **Eligible costs.** Eligible costs for an integrated planning grant include, but are not limited to, reasonable costs for the following:

- (i) Environmental site assessments;
- (ii) Remedial investigations;
- (iii) Health assessments;
- (iv) Feasibility studies;
- (v) Site planning;
- (vi) Community involvement;
- (vii) Land use and regulatory analyses;
- (viii) Building and infrastructure assessments;
- (ix) Economic and fiscal analyses; and
- (x) Any environmental analyses under chapter 43.21C RCW.

(b) **Ineligible costs.** Ineligible costs for an integrated planning grant include, but are not limited to, the following:

- (i) The cost of developing the grant application or negotiating the grant agreement;
- (ii) The cost of dispute resolution under the grant agreement;
- (iii) Retroactive costs, except as provided under subsection (6) of this section;
- (iv) Legal costs including, but not limited to, the cost of seeking client advice, pursuing cost recovery, contribution, or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, penalties incurred by the recipient, defending actions taken against the recipient, and any attorney fees incurred by the recipient; and
- (v) In-kind contributions.

(6) **Retroactive cost eligibility.** Retroactive costs are eligible for reimbursement if the costs are incurred during the period of a prior grant agreement, the costs are eligible under subsection (5) of this section, and the costs have not been reimbursed by the department.

(7) **Limit on eligible costs for a project.**

(a) For a project consisting of a study of a single hazardous waste site, the eligible costs for the project may not exceed two hundred thousand dollars.

(b) For a project consisting of a study area involving more than one hazardous waste site, the eligible costs for the project may not exceed three hundred thousand dollars.

(c) A hazardous waste site may not be included in more than one project.

(8) **Funding of eligible costs.**

(a) **Department share.** The department may fund up to one hundred percent of the eligible costs.

(b) **Recipient share.** The recipient shall fund the percentage of the eligible costs not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

(9) **Administration of multiple grants.** The department may provide integrated planning grants to a local government for more than one project under a single grant agreement.

[Statutory Authority: Chapter 70.105D RCW. WSR 14-18-060 (Order 13-09), § 173-322A-310, filed 8/29/14, effective 9/29/14.]

WAC 173-322A-320 Oversight remedial action grants. (1) Purpose.

The purpose of oversight remedial action grants is to provide funding to local governments that investigate and clean up hazardous waste sites under an order or decree. The grants are intended to encourage and expedite remedial action and to lessen the impact of the cost of such action on ratepayers and taxpayers.

(2) **Project eligibility.** For the purposes of this grant, a project consists of remedial actions conducted under one or more orders or decrees at a single hazardous waste site. A project may extend over more than one biennium. To be eligible for a grant, a project must meet all of the following requirements:

(a) The applicant must be a local government;

(b) The applicant must be a potentially liable person, potentially responsible party, or prospective purchaser at the hazardous waste site;

(c) The project must meet one of the following criteria:

(i) The applicant is required to conduct remedial actions at the hazardous waste site under an order or decree; or

(ii) A person other than the applicant is required to conduct remedial actions at the hazardous waste site under an order or decree and the applicant has:

(A) Signed the order or decree; and

(B) Entered into a written agreement with the other person to reimburse the person for a portion of the remedial action costs incurred under the order or decree;

(d) If the order or decree is issued under the federal cleanup law, it must be signed or acknowledged in writing by the department as a sufficient basis for funding under this chapter; and

(e) The project must be included in the department's ten-year financing plan required under RCW 70.105D.030(5).

(3) **Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

- (a) The threat posed by the hazardous waste site to human health and the environment;
- (b) Whether the applicant is a prospective purchaser of a brown-field property within a redevelopment opportunity zone;
- (c) The land reuse potential of the hazardous waste site;
- (d) Whether the hazardous waste site is located within a highly impacted community;
- (e) The readiness of the applicant to start and complete the work to be funded by the grant and the performance of the applicant under prior grant agreements;
- (f) The ability of the grant to expedite the cleanup of the hazardous waste site;
- (g) The ability of the grant to leverage other public or private funding for the cleanup and reuse of the hazardous waste site;
- (h) The distribution of grants throughout the state and to various types and sizes of local governments; and
- (i) Other factors as determined and published by the department.

(4) **Application process.**

(a) **Project solicitation.** Biennially, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. The department may update its ten-year financing plan as needed during the biennium. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. For multibiennial projects, proposals must be updated biennially. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals and updates should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. For multi-biennial projects, an application must be submitted before each biennium for which additional funds are requested. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

- (i) Project eligibility under subsection (2) of this section; and
- (ii) Funding priority under subsection (3) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund an eligible project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

- (i) Funding priority under subsection (3) of this section;
- (ii) Cost eligibility under subsections (5) and (6) of this section;
- (iii) Allowable funding under subsections (7) and (8) of this section; and
- (iv) Availability of state funds and other funding sources.

(e) **Fund management.** The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.

(5) **Cost eligibility.** To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

(a) **Eligible costs.** Eligible costs for an oversight remedial action grant include, but are not limited to, reasonable costs for the following:

- (i) Emergency or interim actions;
- (ii) Remedial investigations;
- (iii) Feasibility studies and selection of the remedy;
- (iv) Engineering design and construction of the selected remedy;

and

(v) Operation and maintenance or monitoring of a cleanup action component for up to one year after construction completion of the component.

(b) **Ineligible costs.** Ineligible costs for an oversight remedial action grant include, but are not limited to, the following:

(i) The cost of developing the grant application or negotiating the grant agreement;

(ii) The cost of dispute resolution under the order or decree or the grant agreement;

(iii) The costs incurred under an order or decree by a potentially liable person, potentially responsible party, or prospective purchaser other than the recipient, except as provided under subsection (2)(c)(iii) of this section;

(iv) Retroactive costs, except as provided under subsection (6) of this section;

(v) The remedial action costs of the department or the U.S. Environmental Protection Agency reasonably attributable to the administration of an order or decree for remedial action at the hazardous waste site, including reviews of reimbursement requests;

(vi) Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;

(vii) Site development and mitigation costs not required as part of a remedial action;

(viii) Legal costs including, but not limited to, the cost of seeking client advice, pursuing cost recovery, contribution, or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, penalties incurred by the recipient, defending actions taken against the recipient, and any attorney fees incurred by the recipient; and

(ix) In-kind contributions.

(6) **Retroactive cost eligibility.** The following retroactive costs are eligible for reimbursement if they are also eligible under subsection (5) of this section:

(a) Costs incurred under the order or decree between the effective date of the order or decree and the agreement signature date;

(b) Costs incurred under the order or decree during the period of a prior grant agreement that have not been reimbursed by the department;

(c) Costs incurred negotiating the order or decree, provided that the costs are not legal costs and were incurred within:

(i) Sixty days after starting negotiations for an order; or

(ii) One hundred twenty days after starting negotiations for a decree; and

(d) Costs incurred before the effective date of the order or decree conducting independent remedial actions, provided that:

(i) The actions are:

(A) Conducted within five years before the start of negotiations for the order or decree;

- (B) Consistent with the remedial actions required under the order or decree;
- (C) Compliant with the substantive requirements of chapter 173-340 WAC; and
- (D) Incorporated as part of the order or decree; and
- (ii) Costs incurred before the start of negotiations for the order or decree do not exceed six hundred thousand dollars.
- (7) **Funding of eligible costs.**
- (a) **Department share.** The department may fund up to fifty percent of the eligible costs. Except for extended grant agreements, the department may fund a higher percentage of the eligible costs as follows.
- (i) The department may fund up to an additional twenty-five percent of the eligible costs if the applicant is:
- (A) An economically disadvantaged county, city, or town; or
- (B) A special purpose district with a hazardous waste site located within an economically disadvantaged county, city, or town.
- (ii) The department may fund up to an additional fifteen percent of the eligible costs if the applicant uses innovative technology.
- (iii) The department may fund up to a total of ninety percent of the eligible costs if the eligible costs for the project are less than five million dollars and the director or designee determines the additional funding would:
- (A) Prevent or mitigate unfair economic hardship imposed by cleanup liability;
- (B) Create new substantial economic development, public recreational opportunities, or habitat restoration opportunities that would not otherwise occur; or
- (C) Create an opportunity for acquisition and redevelopment of brownfield property under RCW 70.105D.040(5) that would not otherwise occur.
- (b) **Recipient share.** The recipient shall fund the percentage of the eligible costs not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.
- (8) **Cash management of grants.**
- (a) The department may not allocate more funds for a project each biennium than are estimated to be necessary to complete the scope of work for that biennium. The biennial scope of work must be approved by the department.
- (b) The department may not allocate more funds for a project unless the local government has demonstrated to the department that funds awarded during the previous biennium have been substantially expended or contracts have been entered into to substantially expend the funds.
- (9) **Administration of multiple grants.** Except for extended grant agreements, the department may provide oversight remedial action grants to a local government for more than one project under a single grant agreement.
- (10) **Extended grant agreements.**
- (a) **Project eligibility.** The department may provide an oversight remedial action grant to a local government for a hazardous waste site under an extended grant agreement if, in addition to meeting the eligibility requirements in subsection (2) of this section, the project extends over multiple biennia and the eligible costs for the project exceed twenty million dollars.

(b) **Agreement duration.** The initial duration of an extended grant agreement may not exceed ten years. The department may extend the duration of the agreement upon finding substantial progress has been made on remedial actions at the site.

(c) **Department share.** Under an extended grant agreement, the department may not fund more than fifty percent of the eligible costs.

[Statutory Authority: Chapter 70.105D RCW. WSR 14-18-060 (Order 13-09), § 173-322A-320, filed 8/29/14, effective 9/29/14.]

WAC 173-322A-325 Oversight remedial action loans. (1) Purpose. The purpose of oversight remedial action loans is to supplement local government funding and funding from other sources to meet the recipient share requirements for oversight remedial action grants under WAC 173-322A-320. The loans are intended to encourage and expedite the cleanup of hazardous waste sites and to lessen the impact of the cleanup cost on ratepayers and taxpayers.

(2) **Types of loans.** There are two different types of oversight remedial action loans, a standard loan and an extraordinary financial hardship loan. The two types of loans have different project eligibility requirements and different terms and conditions for repayment based upon the applicant's ability to repay the loan.

(a) **Standard loan.** A standard loan is a loan that includes the terms and conditions for repayment.

(b) **Extraordinary financial hardship loan.** An extraordinary financial hardship loan is a loan that includes deferred terms and conditions for repayment. Deferred terms and conditions may not be indefinite. Any such loan must be approved by the director or designee.

(3) **Project eligibility.** For the purposes of this loan, a project consists of remedial actions conducted under an order or decree at a single hazardous waste site. A project may extend over more than one biennium. To be eligible for a loan, a project must meet all of the following requirements:

(a) The applicant must have an oversight remedial action grant for the project under WAC 173-322A-320; and

(b) The applicant must demonstrate the following to the department's satisfaction. The department may require an independent third-party financial review to support the demonstration:

(i) For a standard loan, the applicant's financial need for the loan and ability to repay the loan; or

(ii) For an extraordinary financial hardship loan, the applicant's financial need for the loan, inability to repay the loan under present circumstances, and ability to repay the loan in the future.

(4) **Funding priority.** The department will assign an oversight remedial action loan the same priority as the associated oversight remedial action grant.

(5) **Application process.**

(a) **Project solicitation.** Biennially, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. The department may update its ten-year financing plan as needed during the biennium. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. For multiannual projects, proposals must be updated biennially. To be considered for inclusion in the department's budget for remedial action grants and loans, project pro-

posals and updates should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. For multi-biennial projects, an application must be submitted before each biennium for which additional funds are requested. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

(i) Project eligibility under subsection (3) of this section. If the department determines the applicant meets the eligibility requirements for an extraordinary financial hardship loan, then the department may, upon the approval by the director, provide such a loan to the applicant instead of a standard loan; and

(ii) Funding priority under subsection (4) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund an eligible project, the department will negotiate with the applicant the scope of work and budget for the loan and develop the agreement. The department will consider:

(i) Funding priority under subsection (4) of this section;

(ii) Cost eligibility under subsections (6) and (7) of this section;

(iii) Allowable funding under subsection (8) of this section; and

(iv) Availability of state funds and other funding sources.

(e) **Fund management.** The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.

(6) **Cost eligibility.** The eligible costs for oversight remedial action loans shall be the same as the eligible costs for oversight remedial action grants under WAC 173-322A-320(5).

(7) **Retroactive cost eligibility.** The eligibility of retroactive costs for oversight remedial action loans shall be the same as the eligibility of retroactive costs for the oversight remedial action grants under WAC 173-322A-320(6).

(8) **Funding by department.** The department may provide the recipient of an oversight remedial action loan for up to one hundred percent of the recipient share under WAC 173-322A-320 (7)(b). The loan shall be used by the recipient to supplement local government funding and funding from other sources to meet the recipient share requirement.

(9) **Repayment by recipient.** The terms and conditions for repayment of a loan shall be specified in the loan agreement.

(a) **Standard loans.** For a standard loan, the following terms and conditions shall apply. Additional terms and conditions may be specified in the loan agreement.

(i) **Repayment periods and interest rates.**

(A) If the repayment period is less than or equal to five years, the interest rate shall be thirty percent of the average market rate.

(B) If the repayment period is more than five years and less than or equal to twenty years, the interest rate shall be sixty percent of the average market rate.

(ii) **Interest accrual.** Interest shall accrue on each disbursement as it is paid to the recipient.

(b) **Extraordinary financial hardship loans.** For an extraordinary financial hardship loan, the repayment terms and conditions specified

in (a) of this subsection may be adjusted or deferred. Deferred terms and conditions are dependent on periodic review of the recipient's ability to pay. Terms and conditions may not be deferred indefinitely.

[Statutory Authority: Chapter 70.105D RCW. WSR 14-18-060 (Order 13-09), § 173-322A-325, filed 8/29/14, effective 9/29/14.]

WAC 173-322A-330 Independent remedial action grants. (1) **Purpose.** The purpose of independent remedial action grants is to provide funding to local governments that investigate and clean up hazardous waste sites independently under the voluntary cleanup program. The grants are intended to encourage and expedite independent remedial action and to lessen the impact of the cost of such action on ratepayers and taxpayers.

(2) **Types of grants.** The department may provide the following types of independent remedial action grants:

(a) **Post-cleanup reimbursement grant.** Under this grant, the department may reimburse the recipient after the department has issued a no further action determination for the hazardous waste site or property under the voluntary cleanup program.

(b) **Periodic reimbursement grant.** Under this grant, the department may reimburse the recipient periodically during the investigation and the cleanup of a hazardous waste site or property under the voluntary cleanup program.

(3) **Project eligibility.** For the purposes of these grants, a project consists of independent remedial actions at a single hazardous waste site. A project may extend over more than one biennium. To be eligible for a grant, the project must meet all of the following requirements:

(a) The applicant must be a local government;

(b) The applicant must be a potentially liable person, potentially responsible party, or prospective purchaser at the hazardous waste site or have an ownership interest in the hazardous waste site;

(c) For post-cleanup reimbursement grants, the applicant must have completed independent remedial actions at the hazardous waste site or property and received a no further action determination for the site or property under the voluntary cleanup program;

(d) For periodic reimbursement grants, the applicant must:

(i) Enroll the hazardous waste site in the voluntary cleanup program before entering into a grant agreement for the site;

(ii) Conduct independent remedial actions at the hazardous waste site or property in accordance with work plans authorized by the department under the voluntary cleanup program; and

(iii) Have necessary access to conduct independent remedial actions at the hazardous waste site or obtain such access in accordance with a schedule in the grant agreement.

(4) **Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

(a) The threat posed by the hazardous waste site to human health and the environment;

(b) Whether the applicant is a prospective purchaser of a brown-field property within a redevelopment opportunity redevelopment zone;

(c) The land reuse potential of the hazardous waste site;

(d) Whether the hazardous waste site is located within a highly impacted community;

(e) The readiness of the applicant to start and complete the work to be funded by the grant and the performance of the applicant under prior grant agreements;

(f) The ability of the grant to expedite the cleanup of the hazardous waste site;

(g) The ability of the grant to leverage other public or private funding for the cleanup and reuse of the hazardous waste site;

(h) The distribution of grants throughout the state and to various types and sizes of local governments; and

(i) Other factors as determined and published by the department.

(5) **Application process.**

(a) **Project solicitation.** Biennially, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. The department may update its ten-year financing plan as needed during the biennium. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

(i) Project eligibility under subsection (3) of this section; and

(ii) Funding priority under subsection (4) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund an eligible project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

(i) Funding priority under subsection (4) of this section;

(ii) Cost eligibility under subsections (6) and (7) of this section;

(iii) Allowable funding under subsections (8) and (9) of this section; and

(iv) Availability of state funds and other funding sources.

(e) **Fund management.** The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.

(6) **Cost eligibility.** To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

(a) **Eligible costs.** Eligible costs for an independent remedial action grant include, but are not limited to, reasonable costs for the following:

(i) Emergency or interim actions;

(ii) Remedial investigations;

(iii) Feasibility studies and selection of the remedy;

(iv) Engineering design and construction of the selected remedy;

(v) Operation and maintenance or monitoring of a cleanup action component for up to one year after construction completion of the component; and

(vi) Development of independent remedial action plans or reports submitted to the department for review under the voluntary cleanup program.

(b) **Ineligible costs.** Ineligible costs for an independent remedial action grant include, but are not limited to, the following:

(i) The cost of developing the grant application or negotiating the grant agreement;

(ii) The cost of dispute resolution under the voluntary cleanup program or the grant agreement;

(iii) Retroactive costs, except as provided under subsection (7) of this section;

(iv) Cost of technical consultations provided by the department under the voluntary cleanup program, including reviews of reimbursement requests;

(v) Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;

(vi) Site development and mitigation costs not required as part of a remedial action;

(vii) Legal costs including, but not limited to, the cost of seeking client advice, pursuing cost recovery, contribution, or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, penalties incurred by the recipient, defending actions taken against the recipient, and any attorney fees incurred by the recipient; and

(viii) In-kind contributions.

(7) **Retroactive cost eligibility.** The following retroactive costs are eligible for reimbursement if they are also eligible under subsection (5) of this section:

(a) Costs incurred within five years before the date of the completed grant application; and

(b) Costs incurred during the period of a prior grant agreement that have not been reimbursed by the department.

(8) **Limit on eligible costs for a project.** The eligible costs for a project may not exceed six hundred thousand dollars.

(9) **Funding of eligible costs.**

(a) **Department share.** Except as otherwise provided in this subsection, the department may only fund up to fifty percent of the eligible costs.

(i) The department may fund up to an additional twenty-five percent of the eligible costs if the applicant is:

(A) An economically disadvantaged county, city, or town; or

(B) A special purpose district with a hazardous waste site located within an economically disadvantaged county, city, or town.

(ii) The department may fund up to a total of ninety percent of the eligible costs if the director or designee determines the additional funding would:

(A) Prevent or mitigate unfair economic hardship imposed by the cleanup liability;

(B) Create new substantial economic development, public recreational opportunities, or habitat restoration opportunities that would not otherwise occur; or

(C) Create an opportunity for acquisition and redevelopment of brownfield property under RCW 70.105D.040(5) that would not otherwise occur.

(b) **Recipient share.** The recipient shall fund the percentage of the eligible costs not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

(10) **Reimbursement of eligible costs.**

(a) **Post-cleanup reimbursement grants.** For post-cleanup reimbursement grants, the department may reimburse the recipient for eligible costs only after the department has issued a no further action determination for the hazardous waste site or property under the voluntary cleanup program.

(b) **Periodic reimbursement grants.** For periodic reimbursement grants, the department may reimburse the recipient for eligible costs in accordance with the following terms and conditions.

(i) **Remedial action work plans.** The recipient must submit independent remedial action work plans to the department for review and authorization under the voluntary cleanup program.

(ii) **Periodic reimbursement of remedial actions.** The department may reimburse the recipient no more frequently than quarterly for the following:

(A) The development of independent remedial action work plans and reports;

(B) Independent remedial actions performed in accordance with a work plan authorized by the department in writing; and

(C) Any other independent remedial actions authorized by the department in writing.

(iii) **Performance guarantee for periodic reimbursement.** The department may withhold twenty percent of each periodic reimbursement payment as security for the recipient's completion of remedial actions at the hazardous waste site or property. Any funds withheld by the department may be paid to the recipient when the department issues a no further action determination for the hazardous waste site or property.

(iv) **Post-cleanup reimbursement of retroactive costs.** The department may reimburse the recipient for the retroactive costs specified in subsection (7)(a) of this section, but only after the department has issued a no further action determination for the hazardous waste site or property.

(11) **Administration of multiple grants.** The department may provide independent remedial action grants to a local government for more than one project under a single grant agreement.

[Statutory Authority: Chapter 70.105D RCW. WSR 14-18-060 (Order 13-09), § 173-322A-330, filed 8/29/14, effective 9/29/14.]

WAC 173-322A-340 Area-wide groundwater investigation grants.

(1) **Purpose.** The purpose of area-wide groundwater investigation grants is to provide funding to local governments that investigate known or suspected areas of area-wide groundwater contamination. The investigations are intended to facilitate the cleanup and redevelopment of properties affected by area-wide groundwater contamination.

(2) **Project eligibility.** For the purposes of this grant, a project consists of an investigation of area-wide groundwater contamination in a single study area. A project may extend over more than one

biennium. To be eligible for a grant, a project must meet all of the following requirements:

- (a) The applicant must be a local government;
- (b) The project must involve the investigation of known or suspected area-wide groundwater contamination;
- (c) The applicant must not be required to conduct the investigation under an order or decree;
- (d) The applicant must have the necessary access to conduct the investigation or obtain such access in accordance with a schedule in the grant agreement; and
- (e) The project must be included in the ten-year financing plan required under RCW 70.105D.030(5).

(3) **Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

- (a) The threat posed by the hazardous waste sites to human health and the environment;
- (b) Whether the hazardous waste site is within a redevelopment opportunity zone;
- (c) The land reuse potential of the hazardous waste sites;
- (d) Whether the hazardous waste sites are located within a highly impacted community;
- (e) The readiness of the applicant to start and complete the work to be funded by the grant and the performance of the applicant under prior grant agreements;
- (f) The ability of the grant to expedite the cleanup of the hazardous waste sites;
- (g) The ability of the grant to leverage other public or private funding for the cleanup and reuse of the hazardous waste sites;
- (h) The distribution of grants throughout the state and to various types and sizes of local governments; and
- (i) Other factors as determined and published by the department.

(4) **Application process.**

(a) **Project solicitation.** Biennially, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. The department may update its ten-year financing plan as needed during the biennium. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

- (i) Project eligibility under subsection (2) of this section; and
- (ii) Funding priority under subsection (3) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund an eligible project, the department will negotiate with the applicant

the scope of work and budget for the grant and develop the agreement. The department will consider:

- (i) Funding priority under subsection (3) of this section;
- (ii) Cost eligibility under subsections (5) and (6) of this section;
- (iii) Allowable funding under subsections (7) and (8) of this section; and
- (iv) Availability of state funds and other funding sources.

(e) **Fund management.** The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.

(5) **Cost eligibility.** To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

(a) **Eligible costs.** Eligible costs for an area-wide groundwater investigation grant include, but are not limited to, the reasonable costs for the following:

- (i) Identifying the sources of the area-wide groundwater contamination;
- (ii) Determining the nature and extent of the area-wide groundwater contamination;
- (iii) Identifying the preferential groundwater contaminant migration pathways;
- (iv) Identifying area-wide geologic and hydrogeologic conditions; and
- (v) Establishing area-wide natural groundwater quality, including aquifer classification under WAC 173-340-720.

(b) **Ineligible costs.** Ineligible costs for an area-wide groundwater investigation grant include, but are not limited to, the following:

- (i) The cost of developing the grant application or negotiating the grant agreement;
- (ii) The cost of dispute resolution under the grant agreement;
- (iii) Retroactive costs, except as provided under subsection (6) of this section;
- (iv) Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;
- (v) Site development and mitigation costs not required as part of the remedial action;
- (vi) Legal costs including, but not limited to, the costs of seeking client advice, pursuing cost recovery, contribution, or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, penalties incurred by the recipient, the cost of defending actions taken against the recipient, and any attorney fees incurred by the recipient; and
- (vii) In-kind contributions.

(6) **Retroactive cost eligibility.** Retroactive costs are eligible for reimbursement if the costs are incurred during the period of a prior grant agreement, the costs are eligible under subsection (5) of this section, and the costs have not been reimbursed by the department.

(7) **Limit on eligible costs for a project.** The eligible costs for a project may not exceed five hundred thousand dollars.

(8) **Funding of eligible costs.**

(a) **Department share.** The department may fund up to one hundred percent of the eligible costs.

(b) **Recipient share.** The recipient shall fund the percentage of the eligible costs not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

[Statutory Authority: Chapter 70.105D RCW. WSR 14-18-060 (Order 13-09), § 173-322A-340, filed 8/29/14, effective 9/29/14.]

WAC 173-322A-350 Safe drinking water action grants. (1) **Purpose.** The purpose of safe drinking water action grants is to assist local governments, or a local government applying on behalf of a purveyor, in providing safe drinking water to areas contaminated by, or threatened by contamination from, hazardous waste sites.

(2) **Project eligibility.** For the purposes of this grant, a project consists of safe drinking water actions at a single hazardous waste site. A project may extend over more than one biennium. To be eligible for a grant, a project must meet all of the following requirements:

(a) The applicant must be a local government;

(b) The applicant must be a purveyor or the applicant must be applying on behalf of a purveyor;

(c) The applicant or purveyor must be in substantial compliance, as determined by the department of health, with applicable rules of the state board of health or the department of health, including chapter 246-290 WAC (Group A public water supplies), chapter 246-292 WAC (Waterworks operator certification), chapter 246-293 WAC (Water System Coordination Act), and chapter 246-294 WAC (Drinking water operating permits);

(d) The drinking water source must be affected or threatened by one or more hazardous substances originating from a hazardous waste site;

(e) The department of ecology has determined that the drinking water source:

(i) Exhibits levels of hazardous substances that exceed the maximum contaminant levels (MCLs) established by the state board of health and set forth in WAC 246-290-310;

(ii) Exhibits levels of hazardous substances that exceed the cleanup levels established by the department of ecology under Part VII of chapter 173-340 WAC; or

(iii) Is threatened to exceed the levels of hazardous substances identified in (e) (i) or (ii) of this subsection;

(f) If the safe drinking water action includes water line extensions, the extensions must be consistent with the coordinated water system plan prepared under chapter 70.116 RCW and any plans for new development prepared under chapter 36.70 or 36.70A RCW for the geographic area containing the affected water supplies; and

(g) The applicant must not be required to conduct the safe drinking water action under an order or decree.

(3) **Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

(a) The threat posed by the hazardous waste site to drinking water;

(b) Whether the drinking water serves a highly impacted community;

(c) The per capita cost of providing safe drinking water;

(d) The ability of the grant to expedite the provision of safe drinking water;

(e) The ability of the grant to leverage other public or private funding for the provision of safe drinking water;

(f) The readiness of the applicant to start and complete the work to be funded by the grant and the performance of the applicant under prior grant agreements; and

(g) Other factors as determined and published by the department.

(4) **Application process.**

(a) **Project solicitation.** Biennially, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. The department may update its ten-year financing plan as needed during the biennium. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

(i) Project eligibility under subsection (2) of this section; and

(ii) Funding priority under subsection (3) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund an eligible project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

(i) Funding priority under subsection (3) of this section;

(ii) Cost eligibility under subsections (5) and (6) of this section;

(iii) Allowable funding under subsection (7) of this section; and

(iv) Availability of state funds and other funding sources.

(e) **Fund management.** The department may adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.

(5) **Cost eligibility.** To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

(a) **Eligible costs.** Eligible costs for a safe drinking water action grant include, but are not limited to, reasonable costs for the following, if needed:

(i) Water supply source development and replacement, including pumping and storage facilities, source meters, and reasonable appurtenances;

(ii) Transmission lines between major system components, including interties with other water systems;

(iii) Treatment equipment and facilities;

(iv) Distribution lines from major system components to system customers or service connections;

(v) Bottled water, as an interim action;

(vi) Fire hydrants;
(vii) Service meters;
(viii) Project inspection, engineering, and administration;
(ix) Individual service connections, including any connection fees and charges;
(x) Drinking water well decommissioning under WAC 173-160-381;
and

(xi) Other costs identified by the department of health as necessary to provide a system that operates in compliance with federal and state standards.

(b) **Ineligible costs.** Ineligible costs for a safe drinking water action grant include, but are not limited to, the following:

(i) The cost of developing the grant application or negotiating the grant agreement;

(ii) The cost of dispute resolution under the grant agreement;

(iii) Retroactive costs, except as provided under subsection (6) of this section;

(iv) The cost of oversizing or extending a water system for future development;

(v) The cost of individual service connections for undeveloped lots;

(vi) Local improvement district assessments;

(vii) Operation and maintenance costs;

(viii) Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;

(ix) Legal costs including, but not limited to, the costs of seeking client advice, pursuing cost recovery, contribution, or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, penalties incurred by the recipient, defending actions taken against the recipient, and any attorney fees incurred by the recipient; and

(x) In-kind contributions.

(6) **Retroactive cost eligibility.** Retroactive costs are eligible for reimbursement if the costs are incurred during the period of a prior grant agreement, the costs are eligible under subsection (5) of this section, and the costs have not been reimbursed by the department.

(7) **Funding of eligible costs.**

(a) **Department share.** The department may fund up to ninety percent of the eligible costs.

(b) **Recipient share.** The recipient shall fund the percentage of the eligible costs not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

[Statutory Authority: Chapter 70.105D RCW. WSR 14-18-060 (Order 13-09), § 173-322A-350, filed 8/29/14, effective 9/29/14.]