

WAC 173-340-520 Consent decrees. (1) Procedures for consent decrees initiated by potentially liable persons. To request a consent decree a person shall submit a letter to the department and office of the attorney general via certified mail, return receipt requested, or by personal delivery.

(a) Request. The letter shall describe, based on available information:

(i) The proposed remedial action, including the schedule for the work;

(ii) Information which demonstrates that the settlement will lead to a more expeditious cleanup, be consistent with cleanup standards if the remedial action is a cleanup action, and be consistent with any previous orders;

(iii) The facility, including location and boundaries;

(iv) The environmental problems to be addressed including a description of the releases at the facility and the potential impact of those releases to human health and the environment;

(v) A summary of the relevant historical use or conditions at the facility;

(vi) The date on which the potentially liable person will be ready to submit a detailed proposal;

(vii) Any special scheduling considerations for implementing the remedial actions;

(viii) Names of other persons who the person has reason to believe may be potentially liable persons at the facility; and

(ix) A proposed public participation plan. This proposed plan shall be commensurate with the nature of the proposal and site and shall include the elements listed in WAC 173-340-600(8).

(b) The letter may include:

(i) A waiver of the procedural requirements of WAC 173-340-500 and acceptance, for purposes of settlement, of potentially liable person status.

(ii) The contents of detailed proposal under (g) of this subsection.

(c) A prospective purchaser consent decree is a particular type of consent decree entered into with a person not currently liable for remedial action at the site who proposes to purchase, redevelop, or reuse the site. RCW 70A.305.040(5) contains specific statutory requirements for this type of decree. In addition to the information in (a) and (b) of this subsection, a request for a prospective purchaser consent decree shall include:

(i) Identification of all persons proposing to enter into the consent decree and information which demonstrates that those persons are not currently liable for remedial action at the site;

(ii) Information which demonstrates that the settlement will yield substantial new resources to facilitate cleanup;

(iii) A general description of the proposed continued use or re-development or reuse of the site, including the proposed schedule for purchase, redevelopment, or reuse; and

(iv) Information describing whether and how the proposed settlement will provide a substantial public benefit.

(d) Recognizing that the steps of the cleanup process may be combined and may vary by site, the information in the request shall be at the level of detail appropriate to the steps in the process for which the consent decree is requested. For example, a request for a consent decree for a remedial investigation/feasibility study should generally include the level of information needed for a site hazard assessment,

if not already done by the department, so that the department and the public can evaluate the proposed scope of work and relative priority of the site.

(e) The department may waive part of the letter requirements of (a) of this subsection if the requirements have already been met.

(f) Response. The department shall respond to the request within 60 days, unless the department needs additional time to determine potentially liable person status under WAC 173-340-500. This determination will be based in part on a preliminary finding by the department that any resulting consent decree would be in accordance with RCW 70A.305.040 (4) (a). The department may:

(i) Request additional information;

(ii) Accept the request and require the person to submit a detailed written proposal by a specified date; or

(iii) Provide written reasons for denying the request.

(g) Contents of detailed proposal. The proposal shall contain:

(i) A proposed technical scope of work describing the remedial action to be conducted;

(ii) The data, studies, or any other information upon which the settlement proposal is based;

(iii) A statement describing the potentially liable person's ability to conduct or finance the remedial action as described in the proposed scope of work;

(iv) A schedule for proposed negotiations and implementation of the proposed remedial actions; and

(v) Any additional information requested by the department.

(h) In addition to the information in (g) of this subsection, the detailed proposal for a prospective purchaser consent decree shall include the following:

(i) Information showing a legal commitment to purchase, redevelop or reuse the site;

(ii) A detailed description including a plan of the proposed continued use, redevelopment, or reuse of the site, including, if necessary, an updated schedule for purchase, redevelopment or reuse;

(iii) Information which demonstrates that the redevelopment or reuse of the site is not likely to contribute to the existing or threatened releases at the site, interfere with remedial actions that may be needed at the site, or increase health risks to persons at or in the vicinity of the site; and

(iv) If the requestor does not propose to conduct the entire cleanup of the site, available information about potentially liable persons who are expected to conduct the remainder of the cleanup.

(i) The department and the office of the attorney general shall determine whether the proposal provides a sufficient basis for negotiations, and shall deliver to the potentially liable person within 60 days following receipt of their proposal a written notice indicating whether or not the proposal is sufficient to proceed with negotiations.

(j) Prepayment agreement. Unless otherwise determined by the department, any person who requests a prospective purchaser agreement and receives a notice accepting the request under (f) of this subsection shall enter into a prepayment agreement with the department consistent with WAC 173-340-550(7) before negotiations will begin.

(k) Time limits for negotiations. The department shall set the time period and starting date for negotiations. The department and the office of the attorney general shall then negotiate with those potentially liable persons who have received a notice under (f) of this

subsection that their proposal was sufficient to proceed with negotiations. Negotiations may address one or more phases of remedial action.

(1) Enforcement stay. For consent decrees that are not prospective purchaser agreements, unless an emergency exists, the department will stay any enforcement action under chapter 70A.305 RCW, but the duration of such stay shall not exceed 120 days from the date negotiations begin. The department can withdraw from negotiations if it determines that:

(i) Reasonable progress is not being made toward a consent decree acceptable to the department; or

(ii) The proposal is inappropriate based on new information or changed circumstances.

The department may begin an enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

(2) Procedures for consent decrees initiated by the department.

When the department believes that a consent decree will be a more expeditious method to achieve remedial action at a facility, it may initiate the procedures set forth in this subsection by sending a letter to the potentially liable person. The letter shall be sent via certified mail, return receipt requested, or by personal service.

(a) The letters may be delivered with potentially liable person status letters issued under WAC 173-340-500. The period for negotiation shall not commence until the 30-day comment period required by WAC 173-340-500 has expired or the person expressly waives the procedural requirements of WAC 173-340-500.

(b) Contents of letter. The letter shall:

(i) Inform potentially liable person(s) that the department and the attorney general want to begin negotiations which may lead to a consent decree providing for remedial action;

(ii) Propose a draft consent decree and scope of work;

(iii) Define the negotiation process and schedule which shall not exceed 90 days;

(iv) Reference the department's finding under WAC 173-340-500;

(v) Request a written statement of the potentially liable person's willingness to proceed with the negotiation process defined in the letter; and

(vi) Request the names of other persons whom the person has reason to believe may be potentially liable persons at the facility.

(c) The letter may request the potentially liable person to respond, in writing, to the proposed draft consent decree and scope of work before beginning the negotiation phase.

(d) Negotiations. The department and the office of the attorney general shall negotiate with potentially liable persons who have indicated to the department a willingness to proceed with the negotiations. The negotiation time frame shall begin from the date the potentially liable person receives the letter under (a) of this subsection unless modified by the department. Negotiations may address one or more phases of remedial action.

(e) Enforcement stay. Unless an emergency exists, the department will stay any enforcement action under chapter 70A.305 RCW, but the duration of the stay shall not exceed 90 days from the date negotiations begin. The department can withdraw from negotiations if it determines that:

(i) Reasonable progress is not being made toward a consent decree acceptable to the department; or

(ii) The proposal is inappropriate based on new information or changed circumstances. The department may commence with enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

(f) Deadline extensions. The department may, at its discretion, extend the deadline for negotiations established in (b) of this subsection, provided the extension does not exceed 30 days.

(3) **Filing a decree.** After satisfying the public comment and hearing requirements, the department shall determine whether the proposed settlement negotiated under subsection (1) or (2) of this section, is more expeditious and consistent with cleanup standards established and in compliance with any order issued by the department relevant to the remedial action. After making the requisite findings, the department shall forward the proposed consent decree with the findings required by RCW 70A.305.040(4), to the office of the attorney general. If agreed to by the office of the attorney general, the consent decree will be filed by that office with the appropriate superior court or the federal court having jurisdiction over the matter.

[Statutory Authority: Chapters 70A.305 and 70A.355 RCW. WSR 23-17-159 (Order 18-09), § 173-340-520, filed 8/23/23, effective 1/1/24. Statutory Authority: Chapter 70.105D RCW. WSR 01-05-024 (Order 97-09A), § 173-340-520, filed 2/12/01, effective 8/15/01; WSR 90-08-086, § 173-340-520, filed 4/3/90, effective 5/4/90.]