

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 this chapter 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 this chapter.

(c) Except for the requirement of a restrictive covenant under WAC 173-340-440, where documents are required under this chapter, 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) Any person who conducts an independent interim action or cleanup action for a release that is required to be reported under WAC 173-340-300 shall submit a written report to the department within ninety days of the completion of the action. For the purposes of this section, the department will consider an interim action or cleanup action complete if no remedial action other than compliance monitoring has occurred at the site for ninety days. This does not preclude earlier reporting of such actions or reporting of site investigations. See WAC 173-340-450 for additional requirements for reporting independent remedial actions for releases from underground storage tanks.

(b) The report shall include the information in WAC 173-340-300(2) if not already reported, and enough information to determine if the independent remedial action meets the substantive requirements of this chapter including, the results of all site investigations, cleanup actions and compliance monitoring planned or underway. 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) If the independent interim action or cleanup action is completed within ninety days of discovery, a single written report may be submitted on both the release and the action taken. The report shall contain the information specified in provision (b) of this subsection and shall be submitted within ninety days of completion of the remedial action.

(d) The department shall publish in the *Site Register* a notice of all reports on independent interim actions and cleanup actions received under this section. If deemed necessary, the department shall also conduct an initial investigation under WAC 173-340-310. 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 this chapter 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 this chapter and/or whether the department believes further remedial action is necessary at the facility. 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:

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

(b) Provide a written opinion regarding the remedial actions performed at the site and remove the site or a portion of the site from the hazardous 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 provided for in WAC 173-340-330 (4) (b); or

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

It is the department's policy, in conducting reviews under this subsection, to promote independent remedial actions by delisting sites or portions of sites whenever petitions and supporting documents show that the actions taken are appropriate to characterize and address the contamination at the site.

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

[Statutory Authority: Chapter 70.105D RCW. WSR 01-05-024 (Order 97-09A), § 173-340-515, filed 2/12/01, effective 8/15/01.]