
HOUSE BILL 1266

State of Washington 65th Legislature 2017 Regular Session

By Representatives Peterson, Young, and Fitzgibbon

Read first time 01/16/17. Referred to Committee on Environment.

1 AN ACT Relating to petroleum storage tank systems; and amending
2 RCW 70.149.010, 70.149.020, 70.149.030, and 70.149.040.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 70.149.010 and 1995 c 20 s 1 are each amended to
5 read as follows:

6 It is the intent of the legislature to establish a temporary
7 regulatory program to assist owners and operators of (~~heating oil~~
8 ~~tanks~~) petroleum storage tank systems. The legislature finds that it
9 is in the best interests of all citizens for (~~heating oil tanks~~)
10 petroleum storage tank systems to be operated safely and for tank
11 leaks or spills to be dealt with expeditiously. The legislature
12 further finds that it is necessary to protect tank owners from the
13 financial hardship related to damaged heating oil tanks. The problem
14 is especially acute because owners and operators of heating oil tanks
15 used for space heating have been unable to obtain pollution liability
16 insurance or insurance has been unaffordable.

17 **Sec. 2.** RCW 70.149.020 and 1995 c 20 s 2 are each amended to
18 read as follows:

19 This chapter may be known and cited as the Washington state
20 (~~heating oil~~) pollution liability protection act.

1 **Sec. 3.** RCW 70.149.030 and 1995 c 20 s 3 are each amended to
2 read as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Accidental release" means a sudden or nonsudden release of
6 (~~heating oil~~) petroleum, occurring after July 23, 1995, from
7 operating a (~~heating oil tank~~) petroleum storage tank system that
8 results in bodily injury, property damage, or a need for corrective
9 action, neither expected nor intended by the owner or operator.

10 (2) "Bodily injury" means bodily injury, sickness, or disease
11 sustained by a person, including death at any time, resulting from
12 the injury, sickness, or disease.

13 (3)(a) "Corrective action" means those actions reasonably
14 required to be undertaken by the insured to remove, treat,
15 neutralize, contain, or clean up an accidental release in order to
16 comply with a statute, ordinance, rule, regulation, directive, order,
17 or similar legal requirement, in effect at the time of an accidental
18 release, of the United States, the state of Washington, or a
19 political subdivision of the United States or the state of
20 Washington. "Corrective action" includes, where agreed to in writing,
21 in advance by the insurer, action to remove, treat, neutralize,
22 contain, or clean up an accidental release to avert, reduce, or
23 eliminate the liability of the insured for corrective action, bodily
24 injury, or property damage. "Corrective action" also includes actions
25 reasonably necessary to monitor, assess, and evaluate an accidental
26 release.

27 (b) "Corrective action" does not include:

28 (i) Replacement or repair of heating oil tanks or other
29 receptacles; or

30 (ii) Replacement or repair of piping, connections, and valves of
31 tanks or other receptacles.

32 (4) "Defense costs" include the costs of legal representation,
33 expert fees, and related costs and expenses incurred in defending
34 against claims or actions brought by or on behalf of:

35 (a) The United States, the state of Washington, or a political
36 subdivision of the United States or state of Washington to require
37 corrective action or to recover costs of corrective action; or

38 (b) A third party for bodily injury or property damage caused by
39 an accidental release.

1 (5) "Director" means the director of the Washington state
2 pollution liability insurance agency or the director's appointed
3 representative.

4 (6) "Heating oil" means any petroleum product used for space
5 heating in oil-fired furnaces, heaters, and boilers, including stove
6 oil, diesel fuel, or kerosene. "Heating oil" does not include
7 petroleum products used as fuels in motor vehicles, marine vessels,
8 trains, buses, aircraft, or any off-highway equipment not used for
9 space heating, or for industrial processing or the generation of
10 electrical energy.

11 (7) "Heating oil tank" means a tank and its connecting pipes,
12 whether above or below ground, or in a basement, with pipes connected
13 to the tank for space heating of human living or working space on the
14 premises where the tank is located. "Heating oil tank" does not
15 include a decommissioned or abandoned heating oil tank, or a tank
16 used solely for industrial process heating purposes or generation of
17 electrical energy.

18 (8) "Occurrence" means an accident, including continuous or
19 repeated exposure to conditions, that results in a release from a
20 ~~((heating oil tank))~~ petroleum storage tank system.

21 (9) "Owner or operator" means a person in control of, or having
22 responsibility for, the daily operation of a ~~((heating oil tank))~~
23 petroleum storage tank system.

24 (10) "Petroleum" means any petroleum-based substance including
25 crude oil or any fraction that is liquid at standard conditions of
26 temperature and pressure. The term "petroleum" includes, but is not
27 limited to, petroleum and petroleum-based substances comprised of a
28 complex blend of hydrocarbons derived from crude oil through
29 processes of separation, conversion, upgrading and finishing, such as
30 motor fuels, jet fuels, distillate fuel oils, residual fuel oils,
31 lubricants, petroleum solvents, and used oils. The term "petroleum"
32 does not include propane or asphalt or any other petroleum product
33 which is not liquid at standard conditions of temperature and
34 pressure. Standard conditions of temperature and pressure are at
35 sixty degrees Fahrenheit and 14.7 pounds per square inch absolute.

36 (11) "Pollution liability insurance agency" means the Washington
37 state pollution liability insurance agency.

38 ~~((11))~~ (12) "Property damage" means:

1 (a) Physical injury to, destruction of, or contamination of
2 tangible property, including the loss of use of the property
3 resulting from the injury, destruction, or contamination; or

4 (b) Loss of use of tangible property that has not been physically
5 injured, destroyed, or contaminated but has been evacuated, withdrawn
6 from use, or rendered inaccessible because of an accidental release.

7 ~~((12))~~ (13) "Release" means a spill, leak, emission, escape, or
8 leaching into the environment.

9 ~~((13))~~ (14) "Remedial action costs" means reasonable costs that
10 are attributable to or associated with a remedial action.

11 ~~((14))~~ (15) "Tank" means a stationary device, designed to
12 contain an accumulation of heating oil, that is constructed primarily
13 of nonearthen materials such as concrete, steel, fiberglass, or
14 plastic that provides structural support.

15 ~~((15))~~ (16) "Third-party liability" means the liability of a
16 heating oil tank owner to another person due to property damage or
17 personal injury that results from a leak or spill.

18 (17) "Petroleum storage tank" means a storage tank system that
19 contains petroleum or a mixture of petroleum with de minimis
20 quantities of other regulated substances. Such systems include those
21 containing motor fuels, jet fuels, distillate fuel oils, residual
22 fuel oils, lubricants, petroleum solvents, and used oils.

23 **Sec. 4.** RCW 70.149.040 and 2009 c 560 s 11 are each amended to
24 read as follows:

25 The director shall:

26 (1) Design a program, consistent with RCW 70.149.120, for
27 providing pollution liability insurance for heating oil tanks that
28 provides up to sixty thousand dollars per occurrence coverage and
29 aggregate limits, and protects the state of Washington from unwanted
30 or unanticipated liability for accidental release claims;

31 (2) Administer, implement, and enforce the provisions of this
32 chapter. To assist in administration of the program, the director is
33 authorized to appoint up to two employees who are exempt from the
34 civil service law, chapter 41.06 RCW, and who shall serve at the
35 pleasure of the director;

36 (3) Administer the heating oil pollution liability trust account,
37 as established under RCW 70.149.070;

38 (4) Employ and discharge, at his or her discretion, agents,
39 attorneys, consultants, companies, organizations, and employees as

1 deemed necessary, and to prescribe their duties and powers, and fix
2 their compensation;

3 (5) Adopt rules under chapter 34.05 RCW as necessary to carry out
4 the provisions of this chapter;

5 (6) Design and from time to time revise a reinsurance contract
6 providing coverage to an insurer or insurers meeting the requirements
7 of this chapter. The director is authorized to provide reinsurance
8 through the pollution liability insurance program trust account;

9 (7) Solicit bids from insurers and select an insurer to provide
10 pollution liability insurance for third-party bodily injury and
11 property damage, and corrective action to owners and operators of
12 heating oil tanks;

13 (8) Register, and design a means of accounting for, operating
14 heating oil tanks;

15 (9) Implement a program to provide advice and technical
16 assistance to owners and operators of ~~((active and abandoned heating
17 oil tanks))~~ petroleum storage tank systems if contamination from ~~((an
18 active or abandoned heating oil tank))~~ a petroleum storage tank
19 system is suspected. Advice and assistance regarding administrative
20 and technical requirements may include observation of testing or site
21 assessment and review of the results of reports. ~~((If))~~ The director
22 ~~((finds that contamination is not present or that the contamination
23 is apparently minor and not a threat to human health or the
24 environment, the director))~~ may provide written opinions and
25 conclusions on the results of the investigation in accordance with
26 chapter 70.105D RCW, the model toxics control act, to owners and
27 operators of active and abandoned heating oil tanks and other
28 petroleum storage tank systems. The agency is authorized to collect,
29 from persons requesting advice and assistance, the costs incurred by
30 the agency in providing such advice and assistance. The costs may
31 include travel costs and expenses associated with review of reports
32 and preparation of written opinions and conclusions. Funds from cost
33 reimbursement must be deposited in the heating oil pollution
34 liability trust account. The state of Washington, the pollution
35 liability insurance agency, and its officers and employees are immune
36 from all liability, and no cause of action arises from any act or
37 omission in providing, or failing to provide, such advice, opinion,
38 conclusion, or assistance;

1 (10) Establish a public information program to provide
2 information regarding liability, technical, and environmental
3 requirements associated with active and abandoned heating oil tanks;

4 (11) Monitor agency expenditures and seek to minimize costs and
5 maximize benefits to ensure responsible financial stewardship;

6 (12) Study if appropriate user fees to supplement program funding
7 are necessary and develop recommendations for legislation to
8 authorize such fees.

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