

RCW 70A.325.090 Insurer selection process and criteria. (Expires July 1, 2030.) (1) In selecting an insurer to provide pollution liability insurance coverage to owners and operators of underground storage tanks, the director shall evaluate bids based upon criteria established by the director that shall include:

- (a) The insurer's ability to underwrite pollution liability insurance;
- (b) The insurer's ability to settle pollution liability claims quickly and efficiently;
- (c) The insurer's estimate of underwriting and claims adjustment expenses;
- (d) The insurer's estimate of premium rates for providing coverage;
- (e) The insurer's ability to manage and invest premiums; and
- (f) The insurer's ability to provide risk management guidance to insureds.

The director shall select the bidder most qualified to provide insurance consistent with this chapter and need not select the bidder submitting the least expensive bid. The director may consider bids by groups of insurers and management companies who propose to act in concert in providing coverage and who otherwise meet the requirements of this chapter.

(2) The successful bidder shall agree to provide liability insurance coverage to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action consistent with the following minimum standards:

- (a) The insurer shall provide coverage for defense costs.
- (b) The insurer shall collect a deductible from the insured for corrective action in an amount approved by the director.
- (c) The insurer shall provide coverage for accidental releases in the amount of five hundred thousand dollars per occurrence and one million dollars annual aggregate but no more than one million dollars per occurrence and two million dollars annual aggregate exclusive of defense costs.
- (d) The insurer shall require insurance applicants to meet at least the following underwriting standards before issuing coverage to the applicant:
 - (i) The applicant must be in compliance with statutes, ordinances, rules, regulations, and orders governing the ownership and operation of underground storage tanks as identified by the director by rule; and
 - (ii) The applicant must exercise adequate underground storage tank risk management as specified by the director by rule.
- (e) The insurer may exclude coverage for losses arising before the effective date of coverage, and the director may adopt rules establishing standards for determining whether a loss was incurred before the effective date of coverage.
- (f) The insurer may exclude coverage for bodily injury, property damage, and corrective action as permitted by the director by rule.
- (g) The insurer shall use a variable rate schedule approved by the director taking into account tank type, tank age, and other factors specified by the director.

(3) The director shall adopt all rules necessary to implement this section. In developing and adopting rules governing rates, deductibles, underwriting standards, and coverage conditions, limitations, and exclusions, the director shall balance the owner and operator's need for coverage with the need to maintain the actuarial

integrity of the program, shall take into consideration the economic impact of the discontinued use of a storage tank upon the affected community, and shall consult with the *standing technical advisory committee established under RCW 70A.325.040(3). In developing and adopting rules governing coverage exclusions affecting corrective action, the director shall consult with the Washington state department of ecology.

(4) Notwithstanding the definitions contained in RCW 70A.325.010, the director may permit an insurer to use different words or phrases describing the coverage provided under the program. In permitting such deviations from the definitions contained in RCW 70A.325.010, the director shall consider the regulations adopted by the United States environmental protection agency requiring financial responsibility by owners and operators of underground petroleum storage tanks.

(5) Owners and operators of underground storage tanks or sites containing underground storage tanks where a preexisting release has been identified or where the owner or operator knows of a preexisting release are eligible for coverage under the program subject to the following conditions:

(a) The owner or operator must have a plan for proceeding with corrective action; and

(b) If the owner or operator files a claim with the insurer, the owner or operator has the burden of proving that the claim is not related to a preexisting release until the owner or operator demonstrates to the satisfaction of the director that corrective action has been completed.

(6) When a reinsurance contract has been entered into by the agency and insurance companies, the director shall notify the department of ecology of the letting of the contract. Within thirty days of that notification, the department of ecology shall notify all known owners and operators of petroleum underground storage tanks that appropriate levels of financial responsibility must be established by October 26, 1990, in accordance with federal environmental protection agency requirements, and that insurance under the program is available. All owners and operators of petroleum underground storage tanks must also be notified that declaration of method of financial responsibility or intent to seek to be insured under the program must be made to the state by November 1, 1990. If the declaration of method of financial responsibility is not made by November 1, 1990, the department of ecology shall, pursuant to chapter 70A.355 RCW, prohibit the owner or operator of an underground storage tank from obtaining a tank tag or receiving petroleum products until such time as financial responsibility has been established. [2020 c 20 § 1385; 1990 c 64 § 8; 1989 c 383 § 8. Formerly RCW 70.148.070.]

***Reviser's note:** The "standing technical advisory committee" was abolished by 1994 sp.s. c 9 § 805 and in its place the director was given authority to appoint ad hoc technical advisory committees.