

WAC 374-70-090 Third-party claims. Coverage under the heating oil pollution liability insurance program shall be in excess of other valid insurance and warranties. Payment of a claim will be made only if the cleanup of contamination resulting from an accidental release is not covered by other valid insurance and warranties. Corrective action will be accomplished by the most cost-effective method available. For a third party to receive payment from the heating oil pollution liability insurance program for covered corrective action costs, the following actions are required:

(1) The claim must be for corrective action resulting from a leak or spill from a heating oil tank which has been registered with PLIA prior to the leak or spill;

(2) The claim must satisfy all requirements and restrictions established for third-party claims by chapter 70.149 RCW and this chapter. Any failure to satisfy all requirements and restrictions may be a basis for denial of claim;

(3) The third-party claimant must provide notice to PLIA that a potential third-party claim may exist as soon as practicable after discovery that damage may have occurred from a leak or spill from a named insured's heating oil tank;

(4) The claim must be submitted to PLIA not more than thirty calendar days after the date a registered heating oil tank is abandoned or decommissioned. The heating oil tank owner or operator has the burden of proving, to the satisfaction of the director, that the tank has not been abandoned or decommissioned longer than thirty calendar days. The date that the tank is abandoned or decommissioned, whichever is earlier, will be considered the first day of the thirty calendar days. PLIA may accept claims after thirty calendar days if the abandoned or decommissioned tank was registered with PLIA and was replaced with a new heating oil tank that continues to be registered with PLIA;

(5) Upon receipt of notice of a potential claim, PLIA will commence completion of the notice of claim;

(6) If an accidental release from a named insured's heating oil tank has been confirmed, PLIA, as designated representative of the insurer will initiate an investigation to determine the extent and source of the contamination. Investigation will be performed by PLIA or a designated representative approved by the insurer. PLIA may also assist the named insured heating oil tank owner in determining if the insured's homeowner's insurance provides coverage for third-party damage. The third-party claimant shall cooperate fully with the investigator and provide any information or access necessary to complete the investigation;

(7) If the claim is determined by PLIA to be valid, the third-party claimant will be notified by PLIA to select a heating oil tank service provider, approved by the insurer, to perform corrective action;

(8) The heating oil tank service provider will notify PLIA of selection by the third-party claimant. PLIA will then forward to the heating oil tank service provider the following forms:

(a) Scope of work proposal. This form will provide the third-party claimant and PLIA a proposal of the extent and elements of corrective action, as well as a specific cost proposal;

(b) Change order. This form provides a proposal for change or deviation from the scope of work proposal;

(c) Project field report. This form provides a record of all corrective action and work elements, as well as a record of detailed costs. The project field report must include color photographs of the

project at commencement, completion, and any significant steps in between, as well as appropriate project sketches and/or plans; and

(d) Claim report. This form will include a project closeout report, final cleanup report, and corrective action cost claim;

(9) The heating oil tank service provider will submit for approval to the third-party claimant and to PLIA a scope of work proposal for corrective action;

(10) Upon receipt of approval by the third-party claimant and PLIA of the scope of work proposal, the heating oil tank service provider may commence work to accomplish corrective action;

(11) All work performed by the heating oil tank service provider on behalf of the third-party claimant and the insurer must be within the terms of the contract and the approved scope of work proposal and shall not exceed costs included in the scope of work proposal. Any change(s) or deviation(s) from the approved scope of work proposal must be accomplished through a change order request which must be approved in advance by the third-party claimant and PLIA. Any work performed by the heating oil tank service provider that has not been approved, prior to performance, by the third-party claimant and PLIA, or is beyond the terms of the scope of work proposal or change order(s), or is in excess of costs approved in the scope of work proposal or change order(s), will not be paid or reimbursed under the heating oil pollution liability insurance program. Such work or excess costs will be the responsibility of the third-party claimant and/or heating oil tank service provider;

(12) Corrective action activities and costs must be recorded by the heating oil tank service provider on the project field report form provided by PLIA;

(13) Upon completion of all corrective action, the third-party claimant must sign the project closeout report indicating approval of and satisfaction with all work performed by the heating oil tank service provider;

(14) Upon completion of corrective action and approval by the third-party claimant, the heating oil tank service provider must submit to PLIA a complete claim report. After review and approval of the claim report by PLIA, the heating oil tank service provider will receive payment;

(15) Upon completion of corrective action that appears to satisfy the requirements of all applicable state and local statutes, the director will certify that the claim has been closed;

(16) Approval of claims and payment of covered costs are contingent upon the availability of revenue. The director reserves the right to defer payment at any time that claim demands exceed the revenue available for the heating oil pollution liability insurance program. Payment will commence with sufficient revenue;

(17) PLIA will maintain all records associated with a claim for a period of ten years; and

(18) In the case of an emergency, the director may authorize deviation from this procedure to the extent necessary to adequately respond to the emergency.

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-090, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-090, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-090, filed 12/19/95, effective 1/19/96.]