

**WAC 374-10-090 Eligible and ineligible costs.** (1) Eligible and ineligible costs are listed in the program guidance.

(2) Eligible costs covered by the financial assurance program include, but are not limited to, the following:

(a) Remedial action performed by an agency prime consultant for releases from a petroleum underground storage tank and its system. Actions may include excavation, treatment and/or removal and proper disposal of any soil or water contaminated by the accidental release, as well as proper disposal of nonrepairable petroleum underground storage tank.

(b) Remedial action costs performed by a consultant under contract to the program participant provided that the remedial action has been approved by PLIA prior to the work being conducted, the costs are in compliance with task-based pricing set by the agency, and the agency determines that the remedial action being conducted by the program participant's consultant will expedite cleanup at the site.

(c) Remedial action which will be compliant with state, federal, or tribal cleanup standards.

(d) Remedial action costs incurred by state, federal, or tribal agencies in responding to the release from the enrolled petroleum underground storage tank.

(e) Testing, monitoring, and assessments.

(f) Third-party costs as defined in WAC 374-10-080.

(g) Necessary infrastructure, petroleum underground storage tank, or petroleum underground storage tank system replacement costs are only considered eligible costs under WAC 374-10-060 (1)(a). Any such replacement must meet the current standards for such tank systems, as specified in program guidance.

(h) Replacement of some surface features required by municipal law, including surface asphalt and concrete, curbs or lanes, and stormwater drainage.

(3) Ineligible costs include, but are not limited to, the following:

(a) Penalties or fines assessed by other local, state, federal, or other regulating agencies.

(b) Third-party cost recovery under MTCA, CERCLA, and lawsuits that is not permitted by WAC 374-10-080 or not an eligible cost reimbursement for a state, federal, or other regulating agency.

(c) Remedial action that exceeds cleanup levels required by MTCA or federal standards.

(d) Lost business income related to the release or remediation.

(e) Cleanup of contamination from other sources, unless the agency determines that it is necessary to complete remediation of a release from an enrolled petroleum underground storage tank.

(f) Legal defense costs, including the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(i) The United States, Washington state, or a political subdivision of the United States or Washington state to require remedial action or to recover costs of remedial action; or

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

[Statutory Authority: RCW 70A.545.100(1). WSR 24-18-050, § 374-10-090, filed 8/27/24, effective 9/27/24.]