

Chapter 374-60 WAC

UNDERGROUND STORAGE TANK COMMUNITY ASSISTANCE PROGRAM

WAC

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WAC 374-60-010 Authority and purpose. The purpose of this chapter is to clarify eligibility criteria and requirements for the underground storage tank community assistance program as set forth in chapter 70.148 RCW.

This chapter recognizes the hardship posed by loss of local sources of petroleum products faced by rural and remote communities, local governments and rural hospitals due to an inability to meet U.S. Environmental Protection Agency and department of ecology regulations and requirements for petroleum underground storage tanks. The underground storage tank community assistance program will award grants to qualifying privately owned and operated sources of petroleum products, local government entities, and rural hospitals meeting vital government, public health, education, recreation, or safety needs for replacement or upgrading and, if required, clean up of underground petroleum storage tank sites.

[Statutory Authority: RCW 70.148.130. 05-19-080, § 374-60-010, filed 9/20/05, effective 10/21/05. Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-010, filed 11/27/91, effective 12/28/91.]

WAC 374-60-020 Definitions. (1) "Agency" means the Washington state pollution liability insurance agency.

(2) "Charity care" means necessary hospital health care rendered to indigent persons, to the extent that the persons are unable to pay for the care or to pay deductibles or co-insurance amounts required by a third party payor, as determined by the Washington state hospital commission. (Defined in RCW 70.39.020.)

(3) "Cleanup" means any remedial action taken that complies with WAC 173-340-450 and any remedial action taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with WAC 173-340-360.

(4) "Community assistance program" means the program established by the Washington state legislature under the provision of chapter 70.148 RCW to provide financial assistance grants to:

- (a) Private owners and operators of underground petroleum storage tanks;
- (b) Local governmental entities; and

(c) Rural hospitals.

(5) "Director" means the director of the Washington state pollution liability insurance agency.

(6) "Local government entity" means a unit of local government, either general purpose or special purpose, and includes but is not limited to, counties, cities, towns, school districts and other governmental and political subdivisions. The local government unit must perform a public purpose and either:

- (a) Receive an annual appropriation;
- (b) Have taxing power; or
- (c) Derive authority from state or local government law enforcement power.

(7) "Operator" means any person in control of, or having responsibility for, the daily operation of a petroleum underground storage tank. (Defined in RCW 70.148.010.)

(8) "Owner" means any person who owns a petroleum underground storage tank. (Defined in RCW 70.148.010.)

(9) "Petroleum" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute) and includes gasoline, kerosene, heating oils and diesel fuels. (Defined in RCW 70.148.010.)

(10) "Private owner or operator" means any person, corporation, partnership or business that owns or operates one or more regulated petroleum underground storage tanks maintained for the purpose of providing petroleum products for retail sale to the public.

(11) "Release" means the emission, discharge, disposal, dispersal, seepage, or escape of petroleum from an underground storage tank into or upon land, groundwater, surface water, subsurface soils, or the atmosphere. (Defined in RCW 70.148.010.)

(12) "Remote rural community" means the UST site cannot be located within a city, town or urban area with a population of ten thousand or more.

(13) "Rural hospital" means a hospital located anywhere in the state except the following areas:

(a) The counties of Snohomish (including Camano Island), King, Kitsap, Pierce, Thurston, Clark and Spokane;

(b) Areas within a twenty-five mile radius of an urban area with a population exceeding thirty thousand persons; and

(c) Those cities or city-clusters located in rural counties but which for all practical purposes are urban. These areas are Bellingham, Aberdeen-Hoquiam, Longview-Kelso, Wenatchee, Yakima, Sunnyside, Richland-Kennewick-Pasco, and Walla Walla. (Defined in RCW 18.89.020.)

(14) "Serious financial hardship" means:

(a) For a private sector applicant, that the applicant can provide conclusive evidence that the business and/or business operator(s), business owner(s) having a 20% or greater

interest in the business or other persons with a beneficial interest in the business' profits do not have the cash, cash equivalents or borrowing capacity to bring a petroleum underground storage tank site into compliance with all federal and state underground storage tank regulations and requirements;

(b) For a public sector applicant, that the applicant can provide conclusive evidence that the unit of government does not have adequate fund balances, debt capacity or other local revenue generating options to bring a petroleum underground storage tank site into compliance with all federal and state underground storage tank regulations and requirements; and

(c) For a rural hospital, that the applicant can provide conclusive evidence that the rural hospital does not have the cash, cash equivalents or borrowing capacity to bring a petroleum underground storage tank site into compliance with all federal and state underground storage tank regulations and requirements.

(15) "Sole source" means the only retailer of petroleum products to the motoring public that is located in a city or town or, if the retailer is remote from a community, the only business within a minimum of a five-mile radius where the motoring public can purchase petroleum products. For retailers that meet the requirements of RCW 70.148.130 (20)(b), the business must be the only one within a minimum of a ten-mile radius.

(16) "Underground storage tank (UST)" means any one or combination of tanks, including underground pipes connected to the tank, that is used to contain an accumulation of petroleum and the volume of which (including the volume of underground pipes connected to the tank) is ten percent or more beneath the surface of the ground. (Defined in RCW 70.148.010.)

(17) "UST site" means the location at which underground storage tanks are in place or will be placed. An UST site encompasses all of the property with a contiguous ownership that is associated with the use of the tanks. (Defined in WAC 173-360-120.)

(18) "Vital local government, public health, education, recreation or safety need" means an essential or indispensable service provided by government for citizens.

[Statutory Authority: RCW 70.148.130. 05-19-080, § 374-60-020, filed 9/20/05, effective 10/21/05. Statutory Authority: Chapter 70.148 RCW. 93-04-041 (Order 93-01), § 374-60-020, filed 1/27/93, effective 2/27/93; 91-24-048, § 374-60-020, filed 11/27/91, effective 12/28/91.]

WAC 374-60-030 Appeals. (1) An applicant may appeal any of the following listed decisions under the UST community assistance program to the director:

- (a) Agency's denial of a grant application;
- (b) The amount of the grant contribution allowed by the agency;
- (c) Denial by the agency of a request for payment of certain costs related to the grant;
- (d) Agency's refusal to sign a subordination agreement;
- (e) Agency's refusal to allow an assignment of the grant agreement and deed of trust;
- (f) Agency's determination of the amount of the reimbursement due in the case of a forfeiture and/or a buy out agreement; and

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(g) Agency's decision to terminate or suspend the grant agreement.

(2) An applicant shall file his or her request for an appeal within thirty calendar days after the date of mailing of the letter containing the decision of the director. The appeal shall be conducted as an adjudicative hearing proceeding under chapter 34.05 RCW.

[Statutory Authority: Chapter 70.148 RCW. 96-04-005, § 374-60-030, filed 1/25/96, effective 2/25/96; 91-24-048, § 374-60-030, filed 11/27/91, effective 12/28/91.]

WAC 374-60-040 Communications. All communications with the pollution liability insurance agency shall be addressed to:

Director
Pollution Liability Insurance Agency
1015 10th Avenue SE
P.O. BOX 40930
Olympia WA 98504-0930

[Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-040, filed 11/27/91, effective 12/28/91.]

WAC 374-60-050 Documents—When filed. No applications for assistance, pleadings, or other documents submitted under the underground storage tank community assistance program shall be considered filed with, or served on, the pollution liability insurance agency until it is received at the offices of said agency at 1015 10th Avenue SE, P.O. BOX 40930, Olympia WA 98504-0930.

[Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-050, filed 11/27/91, effective 12/28/91.]

WAC 374-60-060 Applications. (1) Applications for assistance under the underground storage tank community assistance program shall be made on forms furnished by the agency in accordance with their instructions. All applications shall be legible, contain all the information required and shall be accompanied by all required documents and exhibits.

(a) Applications which are illegible, incomplete, or which fail to include all necessary information, documents or exhibits, or which are otherwise not in compliance with these rules, may be rejected by the agency.

(b) The agency may ignore defects in applications which are immaterial or insubstantial.

(2) Separate and different applications will be prepared for:

- (a) Private owners and operators;
- (b) Local government entities; and
- (c) Rural hospitals.

(3) Applications will be prepared in two parts:

(a) Part I of the application is designed to determine if the applicant meets certain eligibility criteria established for the program.

(b) Part II of the application is designed to determine if the applicant meets the financial eligibility criteria established for a grant, and requires detailed financial information, submission of a construction proposal, and certification by a local government entity of the vital local government, public health, education, recreation or safety need met by the continued operation of the UST(s).

(9/20/05)

(4) The director shall provide forms to local government entities for certification that continued operation of UST(s) by the private owners and operators is necessary to meet vital local government, public health, education, recreation or safety needs. Such certification shall consist of a local government resolution certifying:

(a) That other petroleum providers are remote from the community;

(b) The specific vital need or needs the owner or operator meets; and

(c) Designating the local official who will be responsible for negotiating the contract for provision of cost-plus petroleum products to the local governmental entity.

(5) The director shall provide forms to local government entities for certification that maintaining continued operation of the petroleum UST(s) owned by the local government meets a vital local public health, education, recreation, or safety need. Such certification shall consist of a local government resolution certifying that continued operation of the UST(s) meets a vital local government, public health, education, recreation, or safety need.

(6) The director shall provide forms to local government entities for certification that UST(s) operated by rural hospitals meet vital public health, and safety needs. Such certification shall consist of a local government resolution certifying that the continued operation of the UST(s) by the rural hospital is necessary.

[Statutory Authority: RCW 70.148.130. 05-19-080, § 374-60-060, filed 9/20/05, effective 10/21/05. Statutory Authority: Chapter 70.148 RCW. 93-04-041 (Order 93-01), § 374-60-060, filed 1/27/93, effective 2/27/93; 91-24-048, § 374-60-060, filed 11/27/91, effective 12/28/91.]

WAC 374-60-070 Eligibility—Private owners and operators. Private owners and operators, or a combination thereof, of an UST site may be eligible for an underground storage tank community assistance program grant if they meet the following requirements:

(1) Own or operate an UST(s) located in the state of Washington which is regulated by the U.S. Environmental Protection Agency and the department of ecology and for which proof of financial responsibility is currently or will be required;

(2) Own or operate a business that sells or has sold petroleum products to the motoring public in a remote rural area;

(3) Demonstrate that the UST(s) is registered with the department of ecology;

(4) Demonstrate that the replacement or upgrading of the UST(s) and cleanup of the site would, without financial assistance, create serious financial hardship;

(5) Demonstrate that continued operation of the UST(s) meets a vital local government, public health, recreation, or safety need, as evidenced by a local government entity's certification; and

(6) Sites with contamination must file a claim with any valid pollution liability insurance policy.

[Statutory Authority: RCW 70.148.130. 05-19-080, § 374-60-070, filed 9/20/05, effective 10/21/05. Statutory Authority: Chapter 70.148 RCW. 93-04-041 (Order 93-01), § 374-60-070, filed 1/27/93, effective 2/27/93; 91-24-048, § 374-60-070, filed 11/27/91, effective 12/28/91.]

(9/20/05)

WAC 374-60-080 Eligibility—Local government entities. A local government may be eligible for an underground storage tank community assistance program grant if it meets the following requirements:

(1) Be the owner or operator of an UST(s) located in the state of Washington which is regulated by the U.S. Environmental Protection Agency and the department of ecology and for which proof of financial responsibility is currently or will be required;

(2) Demonstrate that the UST(s) is registered with the department of ecology;

(3) Demonstrate that the replacement or upgrading of the UST(s) and cleanup of the site would, without financial assistance, create serious financial hardship;

(4) Demonstrate that continued operation of the UST(s) meets a vital local government, public health, education, recreation, or safety need.

[Statutory Authority: RCW 70.148.130. 05-19-080, § 374-60-080, filed 9/20/05, effective 10/21/05. Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-080, filed 11/27/91, effective 12/28/91.]

WAC 374-60-090 Eligibility—Rural hospitals. A rural hospital may be eligible for an underground storage tank community assistance program grant if it meets the following requirements:

(1) Be the owner or operator of an UST(s) located in the state of Washington which is regulated by the U.S. Environmental Protection Agency and the department of ecology and for which proof of financial responsibility is currently or will be required;

(2) Demonstrate that the UST(s) is registered with the department of ecology;

(3) Demonstrate that the replacement or upgrading of the UST(s) and cleanup of the site would, without financial assistance, create serious financial hardship;

(4) Demonstrate that continued operation of the UST(s) meets a vital local government, public health or safety need as evidenced by a local governmental entity's certification.

[Statutory Authority: RCW 70.148.130. 05-19-080, § 374-60-090, filed 9/20/05, effective 10/21/05. Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-090, filed 11/27/91, effective 12/28/91.]

WAC 374-60-100 Evaluation. (1) Evaluation of applications for the UST community assistance program will be based on an assessment of eligibility, based on the requirements included in chapter 70.148 RCW.

(2) Applications of private owners and operators will be judged on three criteria. Evaluations will be based on:

(a) The financial condition of both the business and its owner(s) and operator(s) to determine if serious financial hardship exists;

(b) The vital local government, public health, education, recreation, or safety need(s) provided by the business; and

(c) Location and type of business.

(3) Applications of local government entities will be judged on three criteria. Evaluations will be based on:

(a) The financial condition of the local government entity to determine if a serious financial hardship exists;

(b) The vital local public health, education, recreation, or safety need(s) met by the continued operation of the UST(s); and

(c) Priority shall be given to local government entities which consolidate multiple operational UST(s) into as few sites as possible.

(4) Applications of rural hospitals will be judged on two criteria. Evaluations will be based on:

(a) The financial condition of the hospital to determine if a serious financial hardship exists; and

(b) The vital local public health or safety need(s) met by the continued operation of the UST(s).

(5) Evaluation of applications will be conducted by a screening team that will assess and score Part I and Part II of the application. The assessments of the screening team will be compiled and presented to the agency director for final determination.

[Statutory Authority: RCW 70.148.130. 05-19-080, § 374-60-100, filed 9/20/05, effective 10/21/05. Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-100, filed 11/27/91, effective 12/28/91.]

WAC 374-60-110 Funding. (1) Funds for the UST community assistance program shall be made available from the pollution liability insurance program trust account in accordance with the provision of chapter 70.148 RCW.

(2) Grants shall be limited to no more than two hundred thousand dollars (\$200,000.00) in value for any one UST site of which amount no more than seventy-five thousand dollars (\$75,000.00) in value may be provided for cleanup of existing contamination caused by petroleum from the tank(s).

(3) Grants shall be limited to only that amount necessary to supplement the applicant's financial resources.

(4) No grant may be used for any purpose other than for replacement or upgrading of UST(s), or for cleanup of contamination caused by petroleum from the tank(s). The director may, however, provide financial assistance for the establishment of a new local government UST site if it is the result of consolidation of multiple operational UST sites into as few sites as possible. In such case, the grant shall be only for the amount of construction of the new UST site. The removal of the old UST(s) and any cleanup associated with the removal shall be the responsibility of the local government.

[Statutory Authority: RCW 70.148.130. 05-19-080, § 374-60-110, filed 9/20/05, effective 10/21/05. Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-110, filed 11/27/91, effective 12/28/91.]

WAC 374-60-120 Grant management. (1) Successful applicants will be notified by letter of the award of a grant. Entitlement to a grant is finalized only after a contract has been finalized between the agency and the grant recipient, and a contract has been finalized between the grant recipient and the contractor.

(a) Contracts may be entered only after all program eligibility requirements have been met, funds are available and the application and evaluation process has been completed to the satisfaction of the agency.

(b) Each contract becomes effective only with the signing of both required contracts. The day of the signing establishes the beginning date of the project. No costs incurred prior to that date are eligible for payment under the grant unless specific provision is made in the grant contract for such costs.

(2) The contract between the agency and a private owner and/or operator shall contain:

(a) An agreement assuring the state of Washington that the business, including the UST site, will be maintained for the retail sale of petroleum products to the public for at least fifteen years after the grant is awarded;

(b) An agreement to sell petroleum products to local governmental entities on a cost-plus basis;

(c) An agreement to comply with all technical and financial responsibility regulations of the U.S. Environmental Protection Agency and the department of ecology;

(d) An agreement awarding the state of Washington a real property lien ensuring repayment of grant funds should any of the above conditions be violated. Such lien is to be binding on all heirs, successors or assignees of the grantee; and

(e) An agreement that should the grantee or any successor fail to adhere to all the terms of the contract through willful act, the amount of the grant shall immediately become due and payable to the state of Washington.

(3) The contract between the agency and a local government shall contain an agreement to comply with all technical and financial responsibility regulations of the U.S. Environmental Protection Agency and the department of ecology.

(4) The contract between the agency and a rural hospital shall contain:

(a) An agreement to comply with all technical and financial responsibility regulations of the U.S. Environmental Protection Agency and the department of ecology; and

(b) An agreement to provide charity care in a dollar amount equivalent to the financial assistance provided under the underground storage tank community assistance program. The period of time for the charity care to be accomplished will be established by the agency in consultation with the department of health, but will not exceed fifteen years.

(5) Contracts between the grantees and contractors shall contain terms covering payments, conditions of work and contaminated soil and water remediation procedures.

(6) If the grantee elects pollution liability insurance as the method for meeting financial responsibility, the insurance policy must name the pollution liability insurance agency as a "loss payee." If another method of demonstrating financial responsibility is selected, there must exist a provision for the agency to place an appropriate encumbrance on that document.

(7) Annually, a private owner or operator that receives a grant must submit a report, on a form provided by the agency, of petroleum business volume and what local government contracts are currently in effect.

(8) Annually, a local government that receives a grant must submit a report, on a form provided by the agency, of petroleum business volume.

(9) Annually, a rural hospital that has received a grant will report to the agency the amount of charity care provided and the dollar value of that care.

(10) At the conclusion of the fifteen-year agreement, the agency will sign a release of any claim on the real property named in the original contract between the grantee and the agency. The responsibility for removing the lien will rest with the current property owner of record.

[Statutory Authority: RCW 70.148.130. 05-19-080, § 374-60-120, filed 9/20/05, effective 10/21/05. Statutory Authority: Chapter 70.148 RCW. 96-04-005, § 374-60-120, filed 1/25/96, effective 2/25/96; 93-04-041 (Order 93-

01), § 374-60-120, filed 1/27/93, effective 2/27/93; 91-24-048, § 374-60-120, filed 11/27/91, effective 12/28/91.]