

WAC 374-10-080 Eligible third-party claims. (1) A third-party claim relating to a release prior to enrollment from a petroleum underground storage tank will not be eligible for funds under this program. The owner or operator of an enrolled petroleum underground storage tank or a third party have the burden to show the release occurred post enrollment by clear, cogent, and convincing evidence.

(2) For a third-party property claim to be eligible, the following requirements must be met:

(a) If applicable, the third party must consent to property access and sign the access agreement.

(b) If applicable, the third party must allow remediation work to occur on their property.

(c) An agreement that the agency may conduct an audit of any claim honored by the agency and that the third party will reimburse the agency for any disallowance of costs occasioned by such an audit. The third party must also agree to retain all records pertaining to the claim for a period determined by the agency, of at least three years after final payment on the claim, and to provide the records to the agency upon request. The three-year period shall be extended until the completion of any audit in progress.

(3) A financial assurance third-party request form must be submitted before the release receives a no further action letter from the agency's technical assistance program.

(4) After submittal of a financial assurance third-party request form, the agency will send notification of approval or denial of the request.

(a) The third party must report any legal claims against the owner or operator of the enrolled petroleum underground storage tank system when filing for financial assurance coverage. All legal claims for costs and damages resulting from a release from the enrolled petroleum underground storage tank must be completed or settled prior to seeking financial assurance coverage.

(b) The third party shall make available to the agency upon request all documentation of property damage necessary to prove that the property damage is reimbursable. This includes, but is not limited to, pleadings, or any other documents filed in any lawsuit for property damage or bodily injury.

(c) The third party shall make available to the agency upon request documentation of bodily injury to include medical reports, statements, investigative reports, or certifications from licensed health professionals necessary to prove that third-party bodily injuries are reimbursable.

[Statutory Authority: RCW 70A.545.100(1). WSR 24-18-050, § 374-10-080, filed 8/27/24, effective 9/27/24.]