

WSR 22-21-049
PROPOSED RULES
POLLUTION LIABILITY
INSURANCE AGENCY

[Filed October 11, 2022, 3:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-035.

Title of Rule and Other Identifying Information: Chapter 374-70 WAC, Heating oil pollution liability insurance program, also referred to as the heating oil insurance program.

Hearing Location(s): On November 30, 2022, at 12:00 to 1:30 p.m.; on December 6, 2022, at 4:00 to 6:00 p.m.; or on December 15, 2022, at 12:00 to 1:30 p.m., virtual meetings. Meeting link can be found on the pollution liability insurance agency's (PLIA) website www.plia.wa.gov.

Date of Intended Adoption: January 1, 2023.

Submit Written Comments to: Phi Ly, P.O. Box 40930, Olympia, WA 98504-0930, email rules@plia.wa.gov, by December 15, 2022.

Assistance for Persons with Disabilities: Xyzlinda Marshall, phone 360-407-0515, TTY 711 or 800-833-6388, email rules@plia.wa.gov, by December 15, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: PLIA provides an effective and efficient government funding model to support owners and operators in meeting financial responsibility and environmental clean-up requirements for underground storage tanks.

The heating oil insurance program was authorized by the legislature under RCW 70A.330.040 to assist owners and operators with the cost of cleaning up releases from heating oil tanks. In 2020, the legislature directed PLIA to transition the heating oil insurance program to the agency's revolving loan and grant program as described in chapter 70A.345 RCW.

The proposed changes to the rule language include the legislative directive that PLIA end new registrations for the heating oil insurance program on July 2, 2020, and it provides procedural updates to program administration.

Reasons Supporting Proposal: This chapter provides registered heating oil tank owners and operators funds to clean up contamination in order to meet the substantive requirements of the Model Toxics Control Act, chapters 70A.305 RCW and 173-340 WAC. The amended rule reflects statutory direction regarding program registration and updates to program administration.

Statutory Authority for Adoption: RCW 70A.330.040(1).

Statute Being Implemented: Chapter 70A.330 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Phi Ly, 500 Columbia Street N.W., Olympia, WA 98501, 360-407-0517.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.A cost-benefit analysis is not required for an existing program.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal

statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:
Is fully exempt.

October 11, 2022

Phi Ly

Legislative and Policy Manager

OTS-4148.1

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-010 Purpose and authority. (1) The purpose of this chapter is to address a solution to the threat posed to human health and the environment by accidental releases of heating oil from heating oil tanks. It is in the best interest of all citizens for heating oil tanks to be operated safely, and for accidental releases or spills to be dealt with expeditiously in order to ensure that the environment, particularly groundwater, ~~((is))~~ and human health are protected. It is also in the best interest of individual heating oil tank owners to protect them from the unexpected liability and potential financial hardship associated with an accidental release from a heating oil tank.

(2) The pollution liability insurance agency is directed by chapter 70A.330 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of heating oil tanks.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-010, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-010, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 96-01-101, § 374-70-010, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Abandoned heating oil tank" means a heating oil tank that has been left unused and that is no longer connected to an oil-fired

furnace used for space heating of human living or working space on the premises where the tank is located.

(2) "Accidental release" means a sudden or nonsudden release of heating oil from a heating oil tank or its system that results in bodily injury, property damage, or a need for corrective action, neither expected nor intended by the owner or operator.

(3) "Agency" means the Washington state pollution liability insurance agency established pursuant to chapter 70A.325 RCW and is referred to as PLIA throughout this chapter. For purposes of chapter 70A.330 RCW, agency or PLIA shall also mean staff or employees of the pollution liability insurance agency.

(4) "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from the injury, sickness, or disease.

(5) "Claim" means a demand made by a named insured, or the insured's representative, for payment of the benefits provided under the heating oil pollution liability insurance program.

(6) (a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

(i) Removal, replacement or repair of heating oil tanks or other receptacles, except reimbursement of new tank replacement costs in accordance with RCW 70A.330.100;

(ii) Replacement or repair of piping, connections, and valves of tanks or other receptacles; or

(iii) Costs directly associated with tank removal.

(7) "Decommissioned heating oil tank" means a heating oil tank that is no longer connected to an oil-fired furnace used for space heating of human living or working space on the premises where the tank is located and that has been taken out of operation in accordance with the International Fire Code and any pertinent local government requirements.

(8) "Director" means the director of the Washington state pollution liability insurance agency or the director's appointed representative.

(9) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(10) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not in-

clude a decommissioned or abandoned heating oil tank, or a tank used solely for industrial process heating purposes or generation of electrical energy.

(11) "Heating oil tank service provider" is an independent contractor responsible for corrective action including sampling and testing, remedial actions, site restoration, and submittal of required reports to PLIA.

(12) "Insurer" means the commercial insurance company providing pollution liability insurance to registered owners of heating oil tanks under the heating oil pollution liability insurance program. PLIA is the reinsurer of the commercial insurance company and acts as the designated representative of the insurer for the heating oil pollution liability insurance program.

(13) "MTCA" means the Model Toxics Control Act (chapter 70A.305 RCW).

(14) "Named insured" means the ~~((individual insureds who are))~~ owner of the heating oil tank ~~((owners))~~ registered for coverage under the heating oil pollution liability insurance program.

(15) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in an accidental release from a heating oil tank.

(16) "Online community" means the cloud-based application and data system used by the agency, the agency's customers, and service providers to submit documentation, report, process, and look up project information.

(17) "Owner" means the person, or his or her authorized representative, legally responsible for a heating oil tank, its contents, and the premises upon which the heating oil tank is located.

~~((17))~~ (18) "Owner or operator" means a person in control of, or having responsibility for, the daily operation of a heating oil tank.

~~((18))~~ (19) "Per occurrence, per site, per year" means one accidental release per site, per year.

~~((19))~~ (20) "Pollution liability insurance agency" (PLIA) means the Washington state pollution liability insurance agency established pursuant to chapter 70A.325 RCW. For purposes of chapter 70A.330 RCW, pollution liability insurance agency shall also mean staff or employees of the pollution liability insurance agency.

~~((20))~~ (21) "Pollution liability insurance agency trust account" means the pollution liability insurance agency trust account established under chapter 70A.325 RCW and established in the custody of the state treasurer. Expenditures from the account are used for the purposes of chapter 70A.325 RCW including the payment of costs of administering the pollution liability insurance program, and payment of reinsurance claims.

~~((21))~~ (22) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

~~((22))~~ (23) "Property damage restoration" means the restoration of property to a similar condition to that of the property prior to the accidental release. Restoration includes the replacement of sod, plants or concrete driveway or walkway, or the replacement of flooring in the case of a basement tank.

~~((23))~~ (24) "Release" means a spill, leak, emission, escape, or leaching into the environment.

~~((24))~~ (25) "Service provider" means an independent contractor or business who provides corrective action to address heating oil tank releases. A service provider is not a representative, staff, or an employee of the pollution liability insurance agency.

(26) "Third-party claimant" means a person alleged to have suffered property damage requiring corrective action or bodily injury as a direct result of a leak or spill from the heating oil tank of a named insured.

~~((25))~~ (27) "Third-party liability" means the liability of a heating oil tank owner to another person due to property damage requiring corrective action or bodily injury that results from a leak or spill from a heating oil tank.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-020, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-020, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-020, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-020, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-030 Responsibility. (1) The director of the pollution liability insurance agency is directed by chapter 70A.330 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of heating oil tanks. The agency implements and administers the pollution liability insurance program established by chapter 70A.325 RCW and the heating oil pollution liability insurance program established by chapter 70A.330 RCW.

(2) The location of the principal office and the mailing address of the agency is:

Pollution Liability Insurance Agency
~~((State of))~~ Washington State
 P.O. Box 40930
 Olympia, WA 98504-0930

(3) The principal administrative and appointing officer of the agency is the director. The director may designate other employees of the agency to act in his or her behalf in the director's absence or with respect to those matters in which so doing would enhance the efficiency of the agency's operations.

(4) In administering the heating oil pollution liability insurance program, PLIA acts as the designated representative of the insurer providing pollution liability insurance to ~~((registered))~~ owners of registered heating oil tanks.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-030, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-030, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-030, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-030, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-040 Insurance program. The director, as the heating oil pollution liability insurance program administrator, is responsible for obtaining pollution liability insurance coverage on behalf of the named insureds: All (~~registered~~) owners of registered heating oil tanks as defined in this chapter. The pollution liability insurance policy will provide (~~sixty thousand dollars~~) \$60,000 coverage, including reinsurance, per occurrence, per site, per year and shall be in excess of other valid insurance and warranties. The policy will be reinsured through the pollution liability insurance agency trust account.

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-040, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 96-01-101, § 374-70-040, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-050 Eligibility. (~~Owners and operators of~~) In accordance with RCW 70A.330.040(1), only heating oil tanks in (the state of) Washington state with registrations in place before July 2, 2020, and the owner associated with that heating oil tank are eligible for coverage under the heating oil pollution liability insurance program.

(1) Participation in the heating oil pollution liability insurance program is optional for heating oil tank owners (~~If a heating oil tank owner wishes to participate in the heating oil pollution liability insurance program, the heating oil tank owner must register the heating oil tank by submitting to PLIA a completed registration form to be provided by PLIA~~) with heating oil tank registrations in place before July 2, 2020.

(2) Abandoned or decommissioned heating oil tanks are not eligible for coverage under the heating oil pollution liability insurance program, except as described in WAC 374-70-080(4) and 374-70-090(4).

(3) Registration of the heating oil tank in the heating oil pollution liability insurance program must be in the name of the current owner of the property where the registered heating oil tank is located. In the event of a property ownership transfer, the new property owner must submit (~~a new~~) an updated registration form within (~~one hundred eighty~~) 180 calendar days of the property ownership transfer in order to (~~avoid a lapse in coverage from the prior registered owner~~) maintain the registration. The date of the property ownership transfer will be considered the first day of the (~~one hundred eighty~~) 180 calendar days. If the new owner does not register within (~~one hundred eighty~~) 180 calendar days, the registration will (~~be considered a new registration and coverage will start on the date the registration was received~~) end.

(a) Property ownership transfers include, but are not limited to, sales, gifting, and inheritances.

(b) A person inheriting property with a heating oil tank registration has 12 months to notify PLIA about the property ownership

transfer. After 12 months the registration ends if there are no notifi-
fications to PLIA and no named property owner.

~~(4)~~ If a claim for coverage under WAC 374-70-080 or 374-70-090 is submitted within ~~((one hundred eighty))~~ 180 calendar days after the property is transferred, and before the new owner has submitted ~~((a new))~~ an updated registration, the new owner will be deemed to be the named insured for the purposes of this chapter.

~~((4))~~ (5) PLIA reserves the right to perform an independent investigation to verify the eligibility of a heating oil tank. All investigative costs will be the responsibility of PLIA.

~~((5) Accidental releases occurring prior to heating oil tank registration are not eligible for coverage under the heating oil pollution liability insurance program.~~

~~(6) Owners and operators of heating oil tanks, or sites containing heating oil tanks where an accidental release has been identified or where the owner or operator knows of an accidental release prior to heating oil tank registration are eligible for coverage under the heating oil pollution liability insurance program; however, if the owner or operator files a claim with PLIA, the owner or operator has the burden of proving, to the satisfaction of the director, that the claim is not related to an accidental release occurring prior to the heating oil tank registration.)~~

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-050, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 96-01-101, § 374-70-050, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-060 Coverage. (1) The effective date of coverage under the heating oil pollution liability insurance program is January 1, 1996. ~~((Thereafter, individual heating oil tank coverage shall become effective upon receipt, by PLIA, of the completed registration form.))~~ Corrective action for an accidental release occurring prior to ~~((the))~~ this effective date ~~((of coverage))~~ will not be covered under the program.

(2) The heating oil pollution liability insurance program provides coverage for corrective action costs up to ~~((sixty thousand dollars))~~ \$60,000 per occurrence, per site, per year, exclusive of other valid insurance or warranties.

(3) **Corrective action costs covered under the heating oil pollution liability insurance program include:**

(a) Corrective action if the accidental release occurs after the registration of a heating oil tank;

(b) Actions necessary to determine the extent and severity of an accidental release;

(c) Costs, not to exceed ~~((sixty thousand dollars))~~ \$60,000 per occurrence, per site, per year;

(d) Costs in excess of other valid insurance or warranties;

(e) Third-party property damage restoration, including landscaping, limited to ~~((one thousand five hundred dollars))~~ \$1,500 for each third-party claimant per occurrence, per site, per year;

(f) Excavation, treatment and/or removal and proper disposal of any soil or water contaminated by the accidental release and proper disposal of nonrepairable heating oil tank or tanks;

(g) Required soil and water sampling and testing to determine if corrective action standards have been met; and

(h) Reimbursement of new tank replacement costs in accordance with RCW 70A.330.100.

(4) Corrective action costs not covered under the heating oil pollution liability insurance program include:

(a) Corrective action if the accidental release occurred prior to the registration of a heating oil tank;

(b) Costs covered by other valid insurance or warranties;

(c) Costs in excess of (~~sixty thousand dollars~~) \$60,000 per occurrence, per site, per year, exclusive of other valid insurance or warranties;

(d) Cleanup of contamination from other sources;

(e) Removal, repair or replacement of the heating oil tank, lines, or furnace, except reimbursement of new tank replacement costs in accordance with RCW 70A.330.100;

(f) Emergency heat restoration procedures;

(g) Cleanup of a site beyond the MTCA cleanup levels;

(h) Corrective action associated with an abandoned or decommissioned heating oil tank or site; (~~and~~)

(i) Corrective action to address releases or damage to the heating oil tank or its system or surrounding property caused by a service provider or contractor;

(j) Corrective action performed by a service provider whose principal is also the named property owner of the registered heating oil tank;

(k) Costs associated with landscaping and surface restoration in excess of previous conditions for the property of the named insured;

(l) Costs associated with property restoration that are not deemed essential to personal safety or are in excess of previous conditions at the site;

(m) Third-party property damage restoration, including landscaping, in excess of (~~one thousand five hundred dollars~~) \$1,500 for each third-party claimant per occurrence, per site, per year; and

(~~(j)~~) (n) 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, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

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

(5) If a claim exceeds (~~sixty thousand dollars~~) \$60,000 in total damages, coverage within the (~~sixty thousand dollars~~) \$60,000 policy limit shall be on a pro rata basis between the insured heating oil tank owner and third-party claimant(s).

(6) A claim will be accepted for coverage only after (~~an investigation has confirmed~~) the named insured provides PLIA with documentation which confirms the existence of an accidental release which is eligible for coverage under these rules. PLIA reserves the right to perform an investigation including, but not limited to, soil sample testing, to confirm a release.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-060, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-060, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-060, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-060, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-070 Parties involved with an accidental release and corrective action. Among the potential parties involved when an accidental release is suspected from a heating oil tank or line are the heating oil tank owner or operator, adjacent property owners, heating oil supplier, PLIA, third-party administrator, department of ecology, and heating oil tank service providers.

(1) Heating oil tank owner or operator. All liabilities caused by an accidental release originating from a heating oil tank are the sole responsibility of the heating oil tank owner or operator. The pollution liability insurance agency and/or the state of Washington accepts no liability, nor portion of the liability, from the heating oil tank owner or operator.

(a) The heating oil tank operator may submit forms to PLIA on behalf of the owner, however, no corrective action may be performed without the specific written consent of the heating oil tank owner.

(b) The heating oil tank owner or operator is responsible for notifying the heating oil supplier in the case of a suspected accidental release and investigating the source and extent of the suspected accidental release.

(c) The heating oil tank owner is responsible (~~(to provide)~~) for providing documentation to PLIA that pollution liability coverage will not be provided by the (~~(owner's homeowners')~~) homeowner's insurer.

(d) If corrective action is implemented, the heating oil tank owner is responsible for selecting a service provider approved by the insurer and approving the completed corrective action.

(2) Adjacent property owners. If an accidental release migrates offsite, or is suspected to have migrated, the adjacent property owner may be involved in the corrective action. In this situation, the heating oil tank owner or operator shall notify PLIA of the occurrence and provide the adjacent property owner's name, address and telephone number.

(3) Heating oil supplier. Some heating oil suppliers provide customer services which may be a resource to evaluate a suspected accidental release to the environment. If after investigating a heating system malfunction, a heating oil supplier determines that an accidental release may have occurred, the heating oil supplier should inform the owner or operator of the accidental release.

(4) PLIA acts as the designated representative of the insurer for purposes of the heating oil pollution liability insurance program. PLIA provides informal advice and technical assistance to heating oil tank owners and operators (~~(, registers heating oil tanks for insurance coverage)~~) (chapter 374-80 WAC), provides listings of service providers approved by the insurer, manages claims for the insurer and provides certification that a claim is closed.

(5) Third-party administrator. PLIA may appoint a third-party administrator to assist in monitoring, investigation and corrective action.

(6) Department of ecology. The department of ecology administers statewide laws and rules detailing MTCA cleanup standards for both soil and groundwater. To be eligible for coverage under the heating oil pollution liability insurance program, corrective action must satisfy MTCA and pertinent local government requirements.

(7) Heating oil tank service provider. A heating oil tank service provider is an independent contractor who contracts with ~~((an))~~ the heating oil tank owner ~~((or operator))~~ to perform corrective action, ~~((including submitting reports to PLIA on behalf of the owner or operator))~~ and meets the requirements detailed in WAC 374-70-100.

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-070, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-070, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-070, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-080 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. 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 an accidental release from a heating oil tank which has been registered with PLIA prior to the accidental release;

(2) The claim must satisfy all requirements and restrictions established by chapter 70A.330 RCW and this chapter. Any failure to satisfy all requirements and restrictions may be a basis for denial of claim;

(3) The heating oil tank owner or operator must provide notice to PLIA that a potential claim exists as soon as practicable after discovery that an accidental release may have occurred;

(4) ~~((The))~~ A claim must be ~~((submitted to))~~ made with PLIA by the owner of the registered tank as soon as practicable, but not more than ~~((thirty))~~ 180 calendar days after the date a registered heating oil tank becomes 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 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, and will ~~((provide))~~ require

the heating oil tank owner (~~(or operator with a list of insurer)~~) to select a service provider from PLIA's listing of approved heating oil tank service providers;

(6) The heating oil tank operator may submit reports and forms on behalf of the heating oil tank owner; however, no corrective action will be initiated or performed without the specific written consent of the heating oil tank owner;

(7) The heating oil tank owner is responsible for investigation to determine the source (~~(and extent)~~) of a suspected accidental release. The heating oil tank owner is also responsible for providing documentation to PLIA that coverage will not be provided by the owner's homeowners' insurer;

(8) If the claim is determined by PLIA to be valid, PLIA will (~~(so)~~) notify the heating oil tank owner or operator. The corrective action shall be performed by a heating oil tank service provider approved by the insurer;

(9) The heating oil tank service provider will notify PLIA of selection by the heating oil tank owner (~~(or operator)~~). PLIA will (~~(then forward to)~~) inform the heating oil tank service provider of the following forms to be used and which are accessed through the on-line community:

(a) Scope of work proposal. This form will provide the heating oil tank owner or operator and PLIA ((a)) the site characterization and proposal of the extent and elements of corrective action to include analytical samples, 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)~~) Closeout report. This (~~(form)~~) will include a project closeout (~~(report)~~) form, final cleanup report, and corrective action cost claim. The closeout report may serve as the closure of the claim under this program;

(10) The heating oil tank service provider will submit for approval to the heating oil tank owner or operator and then to PLIA a scope of work proposal for corrective action at the heating oil tank site;

(11) Upon receipt of approval by the heating oil tank owner (~~(or operator)~~) and PLIA of the scope of work proposal, the heating oil tank service provider may commence work to accomplish corrective action(s);

(12) All work performed by the heating oil tank service provider on behalf of the heating oil tank owner or operator and PLIA 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 heating oil tank owner or operator and then PLIA. Any work performed by the heating oil tank service provider that has not been approved, prior to performance, by the heating oil tank owner or operator (~~(and)~~) and/or PLIA(~~(7)~~) 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 responsibili-

ty of the heating oil tank owner and/or heating oil tank service provider;

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

(14) Upon completion of all corrective action, the heating oil tank owner (~~(or operator)~~) must sign the project closeout report indicating approval of and satisfaction with all work performed by the heating oil tank service provider;

(15) Upon completion of corrective action and approval by the heating oil tank owner (~~(or operator)~~), the heating oil tank service provider must submit to PLIA a complete claim report;

(16) 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;

(17) If a notice of potential claim has been filed and approved by PLIA but no work commenced within 12 months, then PLIA may close the claim for inactivity, and the registered owner must request re-opening of the claim from PLIA;

(18) 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)~~) statutory limit provided in RCW 70A.330.040(1) and to develop a plan on resuming payments. Payment will commence with sufficient revenue;

~~((18))~~ (19) PLIA will maintain all records associated with a claim for a period of (~~(ten)~~) 10 years; and

~~((19))~~ (20) 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 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-080, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-080, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-080, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-080, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-090 Third-party claims. Coverage for a third-party claim under the heating oil pollution liability insurance program shall be in excess of other valid insurance and warranties. Payment of a third-party 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 third-party claim must be for corrective action resulting from (~~(a leak or spill)~~) an accidental release from a heating oil tank which has been registered with PLIA prior to the (~~(leak or spill)~~) accidental release;

(2) The claim must satisfy all requirements and restrictions established for third-party claims by chapter 70A.330 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))~~ an accidental release from a named insured's heating oil tank;

(4) The claim must be submitted to PLIA ~~((not more than thirty calendar))~~ as soon as practicable but no later than 180 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 as impacting the third-party claimant, 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))~~ an approved 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))~~ inform the heating oil tank service provider of the following forms to be used and which are accessed through the online community:

(a) Scope of work proposal. This form will provide the third-party claimant and PLIA the site characterization and a proposal of the extent and elements of corrective action to include analytical samples, 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))~~ Closeout report. This form will include a project closeout report, final cleanup report, and corrective action cost claim. The closeout report may serve as the closure of the claim under this program;

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

(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(s);

(11) All work performed by the heating oil tank service provider on behalf of the third-party claimant and (~~the insurer~~) PLIA 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 then 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~~) in the online community;

(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 third-party 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~~) statutory limit provided in RCW 70A.330.040(1) and to develop a plan on resuming payments;

(17) PLIA will maintain all records associated with a claim for a period of (~~ten~~) 10 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 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-090, filed 12/9/21, effective 1/9/22. 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.]

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-100 Service provider requirements and procedures.

(1) All corrective action shall be performed by insurer approved heating oil tank service providers. A heating oil tank service provider is an independent contractor responsible for corrective action including excavation, sampling and testing, remedial actions, site restoration, and submittal of required reports to PLIA.

(2) Heating oil tank service providers are required to adhere to the terms and conditions detailed in the program's service provider agreement and to renew this agreement annually.

(a) PLIA provides a list of heating oil tank service providers on PLIA's website. This list is reviewed and updated regularly.

(b) Any service provider suspended or terminated due to violation of the service provider agreement is prohibited from participating in the heating oil insurance program.

(3) Once retained by the named insured or the third-party claimant, the heating oil tank service provider works with the insurer, PLIA, as the insurer's designated representative, the heating oil tank owner or operator and/or the third-party claimant to ((perform the following)):

(a) Perform the corrective action;

(b) Document the costs of the corrective action; and

(c) File the forms required through the online community to receive payment from the heating oil pollution liability insurance program.

((+3)) (4) All heating oil tank service providers must follow claims procedures as outlined in WAC ((374-70-070)) 374-70-080.

((+4)) (5) Whenever possible, all corrective action activities must meet the criteria established by MTCA and any pertinent local ordinances or requirements.

[Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-100, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-100, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-120 Appeals. (1) A person may appeal any of the following decisions made under the heating oil pollution liability insurance program to the director:

(a) A denial of eligibility for coverage;

(b) Amount of payment allowed for corrective action;

(c) Amount of payment allowed for property damage;

(d) Amount of payment allowed for a third-party claim; and

(e) A determination that cleanup does not meet MTCA standards.

(2) A person has ((forty-five)) 45 days after the decision to file a written request for a hearing which will include a detailed statement on the reason for the appeal.

(3) If the written request for a hearing is received within ((forty-five)) 45 days, the director shall conduct an adjudicative hearing proceeding under chapter 34.05 RCW.

(4) If the written request for a hearing is not received within ((~~forty-five~~)) 45 days after the decision, no further consideration will be given to the appeal.

[Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-120, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-120, filed 12/19/95, effective 1/19/96.]