

**WSR 25-02-047  
PERMANENT RULES  
POLLUTION LIABILITY  
INSURANCE AGENCY**

[Filed December 20, 2024, 10:39 a.m., effective January 20, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This chapter establishes the underground storage tank revolving loan and grant program pursuant to chapter 70A.345 RCW and outlines the program requirements and processes. The purpose of the program is to assist owners or operators of petroleum underground storage tank systems to: Remediate past releases; upgrade, replace, or remove petroleum underground storage tank systems to prevent future releases; or install new infrastructure or retrofit existing infrastructure for dispensing or using renewable or alternative energy. The program also assists owners and operators of heating oil tanks to remediate past releases or prevent future releases by upgrading, replacing, decommissioning, or removing heating oil tank systems.

Citation of Rules Affected by this Order: New chapter 374-90 WAC, Underground storage tank revolving loan and grant program.

Statutory Authority for Adoption: RCW 70A.345.030.

Adopted under notice filed as WSR 24-21-143 on October 22, 2024.

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Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 20, 2024.

Phi V. Ly  
Legislative and Policy Manager

**OTS-5919.1**

**Chapter 374-90 WAC  
UNDERGROUND STORAGE TANK REVOLVING LOAN AND GRANT PROGRAM**

NEW SECTION

**WAC 374-90-010 Authority and purpose.** This chapter establishes the underground storage tank revolving loan and grant program pursuant to chapter 70A.345 RCW and outlines the program requirements and processes. The purpose of the program is to assist owners or operators of

petroleum underground storage tank systems to: Remediate past releases; upgrade, replace, or remove petroleum underground storage tank systems to prevent future releases; or install new infrastructure or retrofit existing infrastructure for dispensing or using renewable or alternative energy. The program also assists owners and operators of heating oil tanks to remediate past releases or prevent future releases by upgrading, replacing, decommissioning, or removing heating oil tank systems.

#### NEW SECTION

**WAC 374-90-020 Definitions.** Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" or "PLIA" means the pollution liability insurance agency, as used throughout this chapter. For purposes of chapter 70A.345 RCW, agency or PLIA shall mean staff or employees of the pollution liability insurance agency.

(2) "Applicant" means the owner or operator of a petroleum underground storage tank or heating oil tank who has applied to the program.

(3) "Ecology" means the Washington state department of ecology.

(4) "Facility" or "petroleum underground storage tank facility" means the property where the enrolled tank is located, including any tank-related infrastructure within that property. The term encompasses all real property under common ownership associated with the operation of the petroleum underground storage tank. For purposes of this program, facility does not have the same meaning as WAC 173-340-200.

(5) "Grant" means a financial award to a program participant that is not repaid by the grantee.

(6) "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.

(7) "Heating oil tank" means the same as RCW 70A.345.020(2). Heating oil tank does not include a tank used solely for industrial process heating purposes or generation of electrical energy. This term does not include any:

(a) Tank owned by the federal government or located on a federal military installation or federal military base.

(b) Tank located within the Hanford site.

(8) "Location" means the physical area or site where the assessment, cleanup, or infrastructure replacement, upgrade, or installation will occur.

(9) "Model Toxics Control Act" or "MTCA" means the Model Toxics Control Act, chapter 70A.305 RCW, and chapter 173-340 WAC.

(10) "Online community" means the cloud-based application and data system used by the agency and the applicant or participant to submit documentation and to report, process, and look up project information.

(11) "Operator" means the entity in control of, or having a responsibility for, the daily operation of a petroleum underground storage tank or heating oil tank.

(12) "Owner" means a person who owns a petroleum underground storage tank or heating oil tank.

(13) "Participant" means a petroleum underground storage tank owner or operator accepted into the program who receives and accepts a financial award offer, other than a preliminary planning assessment grant, and signs a participant agreement.

(14) "Petroleum" has the same meaning as defined in WAC 173-360A-0150(48).

(15) "Petroleum underground storage tank" means an underground storage tank regulated under chapter 70A.355 RCW or subtitle I of the Solid Waste Disposal Act (42 U.S.C. chapter 82, subchapter IX) that is used for storing petroleum. This includes tanks owned or operated on property under the direct jurisdiction of either the federal government or tribal governments other nonstate regulating agency. This term does not include any:

(a) Septic tank;

(b) Pipeline facility (including gathering lines):

(i) Which is regulated under 49 U.S.C. chapter 601; or

(ii) Which is an intrastate pipeline facility regulated under state laws as provided in 49 U.S.C. chapter 601, and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

(c) Surface impoundment, pit, pond, or lagoon;

(d) Storm water or wastewater collection system;

(e) Flow-through process tank;

(f) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor;

(g) Tank owned by the federal government or located on a federal military installation or federal military base; and

(h) Tank located within the Hanford site.

(16) "Petroleum underground storage tank system" or "tank system" means a petroleum underground storage tank and connected underground piping, underground ancillary equipment, and containment system, if any.

(17) "Preliminary planning assessment" means an identification report, to the agency, of any existing contamination at the facility, the necessary actions to address such contamination, and the cost estimate for cleanup and any desired infrastructure upgrades.

(18) "Prime consultant" means an environmental consultant or business contracted by PLIA to perform the preliminary planning assessment or remediation under the program.

(19) "Program" means the underground storage tank revolving loan and grant program established by chapter 70A.345 RCW.

(20) "Release" has the same meaning as defined in RCW 70A.305.020.

(21) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of chapter 70A.305 RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(22) "Site" has the same meaning as "facility" in RCW 70A.305.020. The phrase "facility" as used in this program is defined above.

(23) "Technical assistance program" means the program administered by the agency under the requirements of chapter 374-80 WAC.

#### NEW SECTION

**WAC 374-90-030 Eligibility—Underground storage tank owner or operator.** To be eligible for the program, an owner or operator of a petroleum underground storage tank must meet the following requirements.

(1) For an operational petroleum underground storage tank:

(a) Maintain compliance with the petroleum underground storage tank requirements of chapter 173-360A WAC, or equivalent federal regulating agency; and

(b) Be registered with the department of ecology or equivalent federal regulating agency.

(c) The petroleum underground storage tank cannot be within the site boundary currently under a Model Toxics Control Act order or decree.

(2) For a nonoperational petroleum underground storage tank, or if the tank has been removed, then the tank must not be within the site boundary of a Model Toxics Control Act order or decree. If the tank has been removed, the applicant must show by clear, cogent, and convincing evidence that the release occurred from a petroleum underground storage tank.

(3) The owner or operator is seeking financial assistance to pay for costs associated with at least one of the following actions:

(a) Remediation of a release or prevention of a threatened release of petroleum from a petroleum underground storage tank or its system;

(b) Upgrade, replacement, or removal of a petroleum underground storage tank system unless closure in place is necessary; or

(c) Upgrade, replacement, or retrofit of existing infrastructure, or the installation of new infrastructure to dispense renewable or alternative energy for motor vehicles, including recharging stations for electric vehicles or alternate fuels.

#### NEW SECTION

**WAC 374-90-040 Eligibility—Heating oil tank owner or operator.**

(1) To be eligible for the program, a heating oil tank owner or operator must have a heating oil tank or a historic heating oil release, and be seeking financial assistance to pay for costs associated with at least one of the following actions:

(a) Remediation of a release or prevention of a threatened release of petroleum from a heating oil tank or its system;

(b) Upgrade, replacement, or removal of a heating oil tank or its system unless a determination is made that closure in place is necessary; or

(c) Upgrade or installation of new infrastructure to replace the heating oil tank with another source for heating purposes.

(2) For a heating oil tank (operational or nonoperational), or if the tank has been removed, then the tank must not be located within the site boundary of a Model Toxics Control Act order or decree. If the heating oil tank has been removed, then the applicant must show by clear, cogent, and convincing evidence that the release occurred from a heating oil tank.

#### NEW SECTION

**WAC 374-90-050 Application.** (1) The application cycle and acceptance dates for the program will be posted on the agency's website.

(2) The director may suspend an application cycle when program funding is limited or if the agency must address a large number of applicants from an application cycle.

(3) Applicants will submit applications through the agency's on-line community. Alternative formats will be provided if requested from the agency.

(4) Applications must be complete with all required information and must be submitted by the application deadline.

(5) PLIA will require an applicant's personal credit history report if the applicant seeks loan funding. This information will be used to assess the applicant's financial condition.

(6) The agency will review all completed applications in the application cycle and will issue written notice about program acceptance to applicants.

(a) For accepted applicants, the notice letter will indicate whether a preliminary planning assessment is required.

(b) The agency may determine that a preliminary planning assessment is not required if an applicant provides evidence of an equivalent and technically sufficient assessment. Such an assessment should be provided in an applicant's application. If PLIA accepts the assessment, the notice letter will confirm that the assessment is accepted and that a preliminary planning assessment is not required.

(c) If an application is denied, the notice letter will list the reasons for program denial. Denied applicants may apply to the program in another application cycle if they address the reasons for denial.

#### NEW SECTION

**WAC 374-90-070 Preliminary planning assessment grant.** (1) The agency may award grant funding for a preliminary planning assessment if there has been a release or threatened release of a hazardous substance to the environment.

(2) The amount awarded through a preliminary planning assessment grant reduces an applicant's total funding award amount. Preliminary planning assessment grant amounts are listed in the program guidance.

(3) If PLIA determines that a preliminary planning assessment is required, the agency will designate a prime consultant to perform the preliminary planning assessment at the location of the release or threatened release.

(4) An award of a preliminary planning assessment grant does not guarantee that the applicant will receive further program funding.

NEW SECTION

**WAC 374-90-080 Project prioritization—Underground storage tank owner or operators.** (1) The agency may rank each application to establish funding and project prioritization.

(2) To ensure that program funds are used to address contamination from petroleum underground storage tanks, the agency may prioritize funding for project locations that require remediation.

(3) The agency will review information from the preliminary planning assessment, the application, and the following factors and any other factors PLIA deems relevant to establish ranking:

(a) Whether or not a release from a petroleum underground storage tank has occurred, and the nature and extent of contamination from that release.

(b) An assessment of whether the petroleum contamination poses a threat to public health and the environment.

(c) An evaluation of the location with preestablished criteria including, but not limited to, proximity to drinking water, provided in the program guidance.

(d) An assignment of a numeric score to each applicant project location and a ranking of each applicant within an application cycle.

(4) The agency may adjust project rankings if the extent of petroleum contamination is later identified as posing an immediate threat to human health or the environment. The agency may also rerank projects within an application award cycle due to emergent conditions or new information.

(5) Applicants may not appeal the agency's project rankings.

NEW SECTION

**WAC 374-90-090 Project prioritization—Heating oil tank owners or operators.** (1) The agency may rank each application to establish funding and project prioritization, which will determine timing on when project remediation work may occur and may limit funding offered based on the factors in subsection (3) of this section.

(2) To ensure that program funds are used to address contamination from heating oil tank releases, the agency may prioritize funding and timing of when project remediation may occur for projects that require immediate remediation and where it is known that the release is impacting surface water, groundwater used for drinking water, or a stormwater system.

(3) The agency will prioritize participants based on the time the application was submitted, general location information, and the following factors and any other factors PLIA deems relevant:

(a) Determine if the project location has contamination from a heating oil tank release and only requires remediation funding.

(b) The project location has contamination from a heating oil tank release and requires funding for remediation and infrastructure upgrade. Program funding is allocated to the cleanup of contamination

from the heating oil tank release before allocation for infrastructure upgrades.

(c) The project location requires funding for only infrastructure upgrades.

(d) The project location includes a vulnerable population as defined in RCW 70A.02.010(14), or an overburdened community as identified in RCW 70A.02.010(11).

(4) The agency may adjust project rankings when the extent of contamination from the heating oil tank release is later identified as posing a threat to human health or the environment.

(5) The program may re-rank or reassess applications due to emergent conditions or availability of new information. Affected applicants will be notified in writing.

(6) Applicants may not appeal the agency's project rankings.

#### NEW SECTION

**WAC 374-90-100 Funding awards—Underground storage tank owners or operators.** (1) The agency may award funding for any amount up to, but not exceeding, the maximum amounts established in RCW 70A.345.030(2) for each applicant for a single petroleum underground storage facility.

(2) Program funding is awarded by loan, grant, agency-led remediation, or a combination of these. The total funding amount cannot exceed the maximum amount established in RCW 70A.345.030(2).

(3) An applicant is considered for the following award types.

(a) Loan.

(i) A loan award is for the amount that the participant is borrowing from the program. The participant will be charged with interest on the outstanding balance of moneys applied to project work. Financing and repayment terms will be described in the participant loan agreement.

(ii) The loan amount is reduced by any grant amount paid towards the preliminary planning assessment and the technical assistance program fee, if applicable.

(iii) Loan awards must be applied to remedial action prior to infrastructure upgrade costs.

(iv) Program participants may select their own consultant to perform remediation and infrastructure upgrades.

(b) Grant.

(i) A grant award is the amount that the program will pay towards the project work identified in the preliminary planning assessment.

(ii) All work may be performed by a prime consultant.

(iii) If applicants or participants are not able to secure access to the location for remediation work, the agency may rescind the award offer or terminate the participant agreement.

(c) Government grant.

(i) A government grant may only be awarded to a state agency, local government, or a tribal government who is the owner or operator of a petroleum underground storage tank.

(ii) A grant award is the amount that the program will pay towards the project work identified in the preliminary planning assessment.

(iii) All work may be performed by a prime consultant.

(iv) If applicants or participants are not able to secure access to the location for remediation work, the agency may rescind the award offer or terminate the participant agreement.

(d) Agency-led remediation.

(i) Agency-led remediation funding is limited to costs associated with remedial action and is subject to cost recovery as provided in RCW 70A.345.070.

(ii) If applicants or participants are not able to secure access to the location for remediation work, the agency may rescind the award.

(iii) All remediation work will be conducted by a prime consultant.

(4) Program funding awards are made after:

(a) The department of health conducts a review of the applicant's financial circumstances and provides a recommendation (as applicable); and

(b) The agency reviews a completed preliminary planning assessment or a technically sufficient assessment that was submitted with the application.

(5) If selected for funding, any applicant with funding needs for remediation will enroll in the agency's technical assistance program with the enrollment fee paid from the funding awarded under this chapter.

(6) When PLIA issues an applicant a written program funding award, the agency may require a meeting to review the terms and conditions of the award. Applicants have 30 calendar days to either accept or decline the program funding award and, if accepting the award, must sign a participant agreement. If the applicant does not accept the program funding award after 30 calendar days, the award terminates.

(7) Funds are not dispersed directly to the participant except with the director's approval.

(8) The agency will directly pay the prime consultant or participant-selected contractor direct costs from the program funding award after review and approval of invoices.

(9) PLIA may terminate a program funding award or may adjust a ranking of an application if information about the project significantly differs from the preliminary planning assessment. If a program funding award is terminated or a ranking is adjusted, the agency will provide written notice to the applicant with an explanation.

#### NEW SECTION

**WAC 374-90-110 Funding awards—Heating oil tank owners or operators.** (1) The agency may award funding in total of any amount up to, but not exceeding, the maximum amounts established in RCW 70A.345.030(2) for each applicant for a single heating oil tank.

(a) Program funding offered by grant is an amount up to, but not exceeding, \$60,000.

(b) Where program funding is only a loan the amount is up to, but not exceeding, the maximum amounts established in RCW 70A.345.030(2) for each applicant for a single heating oil tank.

(c) Where a project is awarded a grant and loan, the program funding combined may not exceed the maximum amounts established in RCW 70A.345.030(2) for each applicant for a single heating oil tank.

(2) Program funding may be offered by loan, grant, or combination of both.

(3) A program funding award is determined after the agency reviews the preliminary planning assessment or technically sufficient assessment, and the department of health conducts an applicant financial review (as applicable). Applicants not seeking loan funding do not need a department of health review.

(4) If the program funding award is applied to remediation, then the applicant must enroll in the agency's technical assistance program. The enrollment fee will then be paid from the total funding award.

(5) The application will be considered for the following program funding award types.

(a) Loan.

(i) A loan award amount is reduced by the amount used for the preliminary planning assessment and the technical assistance program enrollment fee, if applicable.

(ii) Loan funding will be applied to remediation prior to infrastructure upgrades.

(iii) Program participants may select their own consultant to perform remediation and infrastructure upgrades.

(b) Grant.

(i) A grant award is the amount that the program will pay towards the project work identified in the preliminary planning assessment.

(ii) All work may be performed by a prime consultant.

(iii) If applicants or participants are not able to provide access to the location for remediation work, the agency may rescind the award offer or terminate the participant agreement.

(6) If applicants receive a written program funding award, the agency may require a meeting to review the terms and conditions of the award. Applicants have 30 calendar days to either accept or decline the program funding award and, if accepting the award, sign a participant agreement. If the applicant does not accept the program funding award after 30 calendar days, the award terminates.

(7) Funds are not dispersed directly to the participant except with the director's approval.

(8) The agency will directly pay the prime consultant or participant-selected contractor direct costs from the program funding award after review and approval of invoices.

(9) If required, applicants receiving a program funding award may have their award terminated or ranking adjusted when, in PLIA's discretion, information about the project significantly differs from the preliminary planning assessment. In that event, the agency will provide written notice to the applicant with an explanation.

#### NEW SECTION

**WAC 374-90-120 Eligible and ineligible costs—Underground storage tank program funding awards.** (1) Program funding awards used for an asset (e.g., infrastructure), then that asset must have a useful life of at least 13 years.

(2) Loan funding. Eligible costs include, but are not limited to, the following:

(a) Remedial action, including excavation, treatment, and/or removal and proper disposal of any soil or water contaminated by the petroleum release and proper disposal of petroleum underground storage tanks.

(b) Testing and assessments to determine the nature and extent of a release of petroleum and whether cleanup standards have been met.

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

(d) Replacement costs for a new petroleum underground storage tank and certain equipment related to the operation of the affected tank.

(e) Some infrastructure upgrades, including alternative energy fueling facilities.

(3) Grant funding. Eligible grant costs include, but are not limited to, the following:

(a) Remedial action, including excavation, treatment, and/or removal and proper disposal of any soil or water contaminated by the petroleum release and proper disposal of petroleum underground storage tanks.

(b) Testing and assessments to determine the extent and severity of a release of petroleum and whether cleanup standards have been met.

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

(4) Ineligible costs for any program funding award. The program will not pay for ineligible costs incurred by the program participant. PLIA has discretion to determine whether costs are ineligible.

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

(a) Costs covered by other valid insurance or warranties.

(b) Remedial action that exceeds cleanup levels required by the agency or MTCA.

(c) Remedial action to address a release of petroleum from or damage to a petroleum underground storage tank, or its system, or surrounding property caused by the owner or operator, an owner/operator's contractor, or the prime consultant.

(d) Replacement of tanks that were decommissioned or nonoperational at the time of a release.

(e) Any legal costs.

(f) Costs not included in an agency-approved scope of work.

(g) Costs incurred by the participant after the date the participant received a termination letter.

(h) Business related expenses, including:

(i) Costs related to development of the application package.

(ii) Costs for a business to remain operational during remedial activities.

(iii) Costs for lost revenue, including lost business income resulting from closures related to the release or remediation.

(iv) Retroactive costs.

NEW SECTION**WAC 374-90-130 Eligible and ineligible costs—Heating oil tanks.**

(1) Program funding award must be used for improvements (e.g., heating oil tank) that have a useful life of at least 13 years.

(2) Loan funding. Eligible loan costs include, but are not limited to, the following:

(a) Remedial actions, including excavation, treatment, and/or removal and proper disposal of any soil or water contaminated by the petroleum release and proper disposal of heating oil tanks.

(b) Testing and assessments, including:

(i) Costs necessary to determine the nature and extent of the petroleum release.

(ii) Soil sampling, water sampling, soil vapor sampling, and testing to determine if cleanup standards are met.

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

(d) Infrastructure upgrades, including:

(i) Replacement costs for a new heating oil tank that meets the current standards for such tanks, as specified in guidance policy.

(ii) Replacement of certain equipment related to the operation of the affected tank.

(e) Replacement of the heating oil tank and infrastructure with heating infrastructure including:

(i) Alternative energy heating systems.

(ii) Upgrades to existing home heating oil systems.

(f) Other costs included within an agency-approved scope of work.

(3) Grant funding. Eligible grant costs include, but are not limited to, the following:

(a) Remedial actions, including excavation, treatment, and/or removal and proper disposal of any soil or water contaminated by the petroleum release and proper disposal of heating oil tanks.

(b) Testing and assessments, including:

(i) Costs necessary to determine the nature and extent of the petroleum release.

(ii) Soil sampling, water sampling, soil vapor sampling, and testing to determine if cleanup standards are met.

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

(d) Other costs included within an agency-approved scope of work.

(4) Loan or grant funding. Ineligible costs will not be paid with program funds. The program is not responsible for paying any ineligible costs incurred by the participant. Ineligible costs include, but are not limited to, the following:

(a) Costs covered by other valid insurance or warranties.

(b) Remedial action that exceeds cleanup levels required by the agency or MTCA.

(c) Remedial action to address a release or damage to a heating oil tank or its system or surrounding property caused by the owner or operator, the owner/operator's contractor, or the prime consultant.

(d) Replacement of tanks that were decommissioned, temporarily out of service, or abandoned at the time of a release of petroleum.

- (e) Any legal costs, including the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions.
- (f) Costs not included in an agency-approved scope of work.
- (g) Costs incurred by the participant after the date the participant received a termination letter.
- (h) Temporary heat restoration.
- (i) Business related expenses, including:
  - (i) Costs needed to develop the application package.
  - (ii) Costs for a business to remain operational during remedial activities.
  - (iii) Costs for lost revenue.
  - (iv) Retroactive costs.

#### NEW SECTION

**WAC 374-90-140 Participant program termination.** (1) The agency may terminate the program funding award, in whole or in part, for any of the following situations.

(a) The participant fails to comply with the program funding award terms and conditions.

(b) The participant and agency mutually agree to the suspension or termination of the program funding award.

(c) A participant's facility enters into a Model Toxics Control Act enforcement order, agreed order, or consent decree.

(2) The agency may immediately terminate a loan or grant without notice when necessary to protect the interests of the state.

(3) The participant will be notified in writing if the agency terminates the program funding award. A cost calculation, record keeping, and program summarization process will begin no later than one week after written notice of the termination has been mailed to the participant. The notice will describe the procedures necessary to close out participation in the program. The participant will repay the remainder of the loan according to the established loan terms.

#### NEW SECTION

**WAC 374-90-150 Overpayments.** (1) The agency may require an owner or operator or prime consultant to return any overpayment made by the program. Overpayments may occur if:

(a) Another party, such as an insurer, has paid costs prior to payments from the program; or

(b) The agency discovers an accidental overpayment has been made to an owner, operator, or prime consultant for any reason.

(2) If an overpayment is not paid upon demand, the agency may pursue one of the following actions:

(a) Collections. The agency may request cost recovery with a debt collection agency.

(b) Lien filing. The agency may seek cost recovery of remedial action costs from any liable person by filing a lien on the petroleum underground storage tank facility as authorized under RCW 70A.345.070.

(c) Civil action. The agency may request the attorney general's office to commence a civil action against the owner or operator in su-

perior court to recover costs and the agency's administrative and legal expenses to pursue recovery.

NEW SECTION

**WAC 374-90-160 Fraud and material omissions.** (1) The agency may seek return of payments made if:

(a) Any party misrepresents or omits material facts relevant to the agency's determination of coverage; or

(b) Any party, with intent to defraud, initiates a loan or grant request or issues or approves an invoice or request for payment, with knowledge that the information submitted is false in whole or in part.

(2) If the agency determines that any party has committed program fraud or omitted material information, the agency may request the attorney general's office to:

(a) Commence a civil action against the person in superior court; or

(b) Recover the overpayment and other expenses as determined by a court.

(3) If the agency determines that the owner or operator of an enrolled petroleum underground storage tank omitted material facts or intentionally defrauded the program, it will terminate program enrollment, and any person or party determined to have committed program fraud may be prohibited from applying for future funding. The agency will report instances of fraud to the appropriate authorities including criminal referral for prosecution.

(4) Any party participating in the program must agree to allow the agency to conduct financial audits related to the receipt of payments intended for remedial actions.