

Chapter 70A.545 RCW
PETROLEUM UNDERGROUND STORAGE TANKS—FINANCIAL ASSURANCE PROGRAM

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RCW 70A.545.005 Purpose of chapter. (Expires July 1, 2030.) The purpose of this chapter is to create a state financial assurance program that adequately protects public health and safety and the environment from impacts due to petroleum underground storage tank system releases and meets the federal requirements for financial assurance so that a petroleum release will be appropriately addressed. The program focuses on prevention of releases, responsiveness to any release, and emphasizes remediation of releases in areas of risk for drinking water impacts or to equitably protect human health and the environment in communities that are marginalized, overburdened, and underserved. The program is administered by the pollution liability insurance agency. [2023 c 170 § 1.]

RCW 70A.545.010 Definitions. (Expires July 1, 2030.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means the pollution liability insurance agency.

(2) "Annual aggregate" means the maximum amount of money the program will pay for all of an owner's or operator's eligible costs associated with a petroleum underground storage tank in one year.

(3) "Bodily injury" means actual medically documented costs and medically documentable future costs of adverse health effects that have resulted from exposure to a release from a petroleum underground storage tank. The term does not include pain and suffering.

(4) "Director" means the director or designee of the state pollution liability insurance agency.

(5) "Loss declaration form" means a request for payment from the state financial assurance program filed by the owner or operator.

(6) "Loss reserve" means the amount set aside by the agency for cost and expenses related to requests that have been made by an owner or operator.

(7) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from a petroleum underground storage tank.

(8) "Operator" means a person in control of, or having responsibility for, the daily operation of a petroleum underground storage tank.

(9) "Owner" means a person who owns a petroleum underground storage tank.

(10) "Per occurrence" means the period of time from identification through remediation of a release from a petroleum underground storage tank.

(11) "Petroleum" means any petroleum-based substance, including crude oil or any fraction that is liquid at standard conditions of temperature and pressure. "Petroleum" includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, and heating oils. The term does not include propane, asphalt, or any other petroleum product that is not liquid at standard conditions of temperature and pressure. Standard conditions of temperature and pressure are at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

(12) "Petroleum underground storage tank" means an underground storage tank system 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.

(13) "Petroleum underground storage tank facility" means the location where the petroleum underground storage tank is located. The term encompasses all real property under common ownership associated with the operation of the petroleum underground storage tank.

(14) "Program" means the state financial assurance program created in this chapter.

(15) "Property damage" means a documented adverse physical impact to structures or property as a result of a release from a petroleum underground storage tank.

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

(17) "Remedial action" has the same meaning as defined in RCW 70A.305.020.

(18) "Surplus reserve" means the amount set aside by the agency to provide financial protection from unexpected losses.

(19) "Third-party claim" means a civil action brought or asserted by an injured party against an owner or operator of a petroleum underground storage tank for bodily injury or property damages resulting from a release from a petroleum underground storage tank. The following entities are not considered a third party: A petroleum underground storage tank owner or operator; the owner of the property where the petroleum underground storage tank is located; a person to whom properties are transferred in anticipation of damage due to a release; employees or agents of an owner or operator; or employees or agents of the property owner. [2023 c 170 § 2.]

RCW 70A.545.020 State financial assurance program. (Expires July 1, 2030.) (1) The agency must establish and administer a state financial assurance program for owners and operators of petroleum

underground storage tanks that meets the financial responsibility requirements established under chapter 70A.355 RCW.

(2) To participate in the program, an owner or operator must register a petroleum underground storage tank in accordance with procedures established by the agency and maintain compliance with the program eligibility requirements established by the agency. The agency may remove from the program any owner or operator who fails to maintain compliance with the program eligibility requirements.

(3) The agency may conduct an assessment of a registered petroleum underground storage tank facility and any release from the petroleum underground storage tank to determine program or cost eligibility. If an owner or operator does not allow an assessment, the agency may remove the owner or operator from the program or deny requests for payment under the program.

(4) Under the program, the agency may provide an eligible owner or operator of a registered petroleum underground storage tank the following financial assurances:

(a) For releases occurring after tank registration, up to \$2,000,000 per occurrence for taking remedial action and for compensating third parties for bodily injury and property damage caused by the release during the time the tank is registered by the owner or operator; and

(b) For releases occurring prior to tank registration, up to \$1,000,000 per occurrence for taking remedial action.

(5) Under the program, the agency may not expend more than \$3,000,000 per state fiscal year for multiple occurrences involving a single petroleum underground storage tank.

(6) The agency may prioritize funding for a release under the program based on the following factors:

(a) The threats posed by the release to human health and the environment;

(b) Whether the population threatened by the release may include a vulnerable population or an overburdened community as defined in RCW 70A.02.010; and

(c) Other factors specified by the agency.

(7) Claims for remedial action costs will receive priority over payment of a third-party claim. Before funding any third-party claim resulting from a release under the program, the agency must reserve the estimated cost of any remedial actions necessary to address the release, and if funding is remaining then payment may be made on an eligible third-party claim.

(8) Funding for remedial actions and third-party claims under the program is limited to the reasonable and necessary eligible costs established by the agency.

(a) For remedial actions, the agency may establish a range of eligible costs or base payment of eligible costs on criteria to be met by persons who contract to perform remedial actions.

(b) The agency is not liable for any costs for remedial actions or third-party claims under the program where no owner or operator exists.

(9) The agency may require an agency representative to be present during the removal of a registered petroleum underground storage tank. If an owner or operator does not allow an agency representative to be present during the removal or does not comply with procedures established by the agency, the agency may deny requests for payment of tank removal costs under the program. [2023 c 170 § 3.]

RCW 70A.545.030 Fee to recover cost of program administration. (Expires July 1, 2030.) The agency must by rule establish a fee to recover from owners and operators of registered petroleum underground storage tanks the cost of administering the program. The fee may be collected on an annual basis and may not exceed \$25,000 per petroleum underground storage tank per year. [2023 c 170 § 4.]

RCW 70A.545.040 Return of payments to agency. (Expires July 1, 2030.) (1) The agency may require an owner or operator to return any cost overpayment made by the agency under this chapter. If the cost overpayment is not returned upon request by the agency:

- (a) The agency may file a lien on the petroleum underground storage tank facility or other property owned by the owner or operator under RCW 70A.545.070 to recover the cost overpayment; and
- (b) The attorney general, at the request of the agency, may commence a civil action against the owner or operator in superior court to recover the cost overpayment and the agency's administrative and legal expenses to recover the cost overpayment.

(2) The agency may require an owner or operator to return any cost payment made by the agency under this chapter if the owner or operator misrepresents or omits a fact relevant to a determination made by the agency under this chapter or if the owner or operator fails to complete the remedial action that the agency determined at the time of the cost payment to be necessary to adequately address the release. If the cost payment is not returned as required by the agency:

- (a) The agency may file a lien on the petroleum underground storage tank facility or other property owned by the owner or operator under RCW 70A.545.070 to recover the cost payment; and
- (b) The attorney general, at the request of the agency, may commence a civil action against the owner or operator in superior court to recover:
 - (i) The cost payment;
 - (ii) A civil penalty as determined by the court up to the full amount of the cost payment, if the agency's repayment request is based on willful actions of the owner or operator; and
 - (iii) The agency's administrative and legal expenses to recover the cost payment.

(3) If a person, with intent to defraud, submits a loss declaration form, or issues an invoice or other demand for payment under this chapter with knowledge that it is false in whole or in part, and with knowledge that it is being submitted to the agency for cost payment, the agency may require that the person return any cost payment received based on the false loss declaration form, invoice, or other demand for payment. If the cost payment is not returned as required by the agency:

- (a) The agency may file a lien on the petroleum underground storage tank facility or other property owned by the owner or operator under RCW 70A.545.070 to recover the cost payment; and
- (b) The attorney general, at the request of the agency, may commence a civil action against the person in superior court to recover:
 - (i) The cost payment;
 - (ii) A civil penalty as determined by the court up to the full amount of the cost payment; and

(iii) The agency's administrative and legal expenses to recover the cost payment. [2023 c 170 § 5.]

RCW 70A.545.050 Remedial actions—Required conditions. (Expires July 1, 2030.) (1) The agency may conduct remedial actions to investigate or clean up a release from a petroleum underground storage tank registered under the state financial assurance program if the following conditions are met:

(a) The owner or operator has received, or is eligible to receive, funding for remedial actions under the program; and

(b) The owner or operator provides consent for the agency to:

(i) Conduct the remedial actions; and

(ii) Enter upon the real property to conduct the remedial actions.

(2) The agency may not expend more per occurrence to take remedial action under this section than the financial assurance limits specified in RCW 70A.545.020. [2023 c 170 § 6.]

RCW 70A.545.060 Remedial actions on unregistered storage tanks—Required conditions. (Expires July 1, 2030.) (1) The agency may conduct remedial actions to investigate or clean up a release from a petroleum underground storage tank, even if the petroleum underground storage tank is not registered under the state financial assurance program, if the following conditions are met:

(a) The release occurs in an area of risk for drinking water impacts or where addressing the release is necessary to equitably protect human health and the environment in communities that have been marginalized, overburdened, and underserved;

(b) The owner or operator, or owner of the property where the petroleum underground storage tank is located, provides consent for the agency to:

(i) Conduct the remedial actions;

(ii) Enter upon the real property to conduct the remedial actions; and

(iii) Recover the costs of the remedial actions from the owner or operator or potentially liable persons; and

(c) The owner of the petroleum underground storage tank facility consents to the agency filing a lien on the facility under RCW 70A.545.070 to recover the agency's remedial action costs.

(2) The agency may seek recovery of any remedial action costs incurred by the agency under this section from any liable person. The agency may file a lien on the petroleum underground storage tank facility under RCW 70A.545.070 to recover the agency's remedial action costs. The attorney general, at the request of the agency, may commence a civil action against any liable person to recover the agency's remedial action costs. [2023 c 170 § 7.]

RCW 70A.545.070 Liens authorized—Process. (Expires July 1, 2030.) (1) The agency may file a lien against the petroleum underground storage tank facility where the petroleum underground storage tank is located or property owned by the owner or operator of the petroleum underground storage tank if the agency incurs remedial

action costs under RCW 70A.545.060 or demands repayment of costs paid under RCW 70A.545.040 and those costs are not recovered by the agency.

(a) A lien filed under this section may not exceed the remedial action costs incurred or repayments demanded by the agency.

(b) A lien filed under this section has priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded, except for local and special district property tax assessments.

(2) Before filing a lien under this section, the agency shall give notice of its intent to file a lien to the owner of the petroleum underground storage tank facility on which the lien is to be filed, mortgagees, and lienholders of record.

(a) The agency shall send the notice by certified mail to the petroleum underground storage tank facility owner and mortgagees of record at the addresses listed in the recorded documents. If the petroleum underground storage tank facility owner is unknown or if a mailed notice is returned as undeliverable, the agency shall provide notice by posting a legal notice in the newspaper of largest circulation in the county in which the site is located. The notice must provide:

(i) A statement of the purpose of the lien;

(ii) A brief description of the real property to be affected by the lien; and

(iii) A statement of the remedial action costs incurred or repayments demanded by the agency.

(b) If the agency has reason to believe that exigent circumstances require the filing of a lien prior to giving notice under this subsection, the agency may file the lien immediately. Exigent circumstances include, but are not limited to, an imminent bankruptcy filing by the petroleum underground storage tank facility owner or the imminent transfer or sale of the real property subject to lien by the petroleum underground storage tank facility owner, or both.

(3) A lien filed under this section is effective when a statement of lien is filed with the county auditor in the county where the petroleum underground storage tank is located. The statement of lien must include a description of the real property subject to lien and the amount of the lien.

(4) Unless the agency determines it is in the public interest to remove the lien, the lien continues until the liabilities for the remedial action costs incurred or repayments demanded by the agency have been satisfied through sale of the real property, foreclosure, or other means agreed to by the agency. Any action for foreclosure of the lien must be brought by the attorney general in a civil action in the court having jurisdiction and in the manner prescribed for judicial foreclosure of a mortgage under chapter 61.24 RCW.

(5) The agency may not file a lien under this section against a petroleum underground storage tank owned by a local government. [2023 c 170 § 8.]

RCW 70A.545.080 Deposit of moneys into the pollution liability insurance program trust account. (Expires July 1, 2030.) (1) The following moneys must be deposited into the pollution liability insurance program trust account created in RCW 70A.325.020:

- (a) All moneys appropriated by the legislature to pay for the agency's operating costs to carry out the purposes of this chapter;
 - (b) All fees or contributions collected from owners or operators under RCW 70A.545.030;
 - (c) Any recovery of remedial action costs incurred by the agency under chapter 170, Laws of 2023; and
 - (d) Any payments recovered or civil penalties collected by the agency under RCW 70A.545.040.
- (2) Moneys in the pollution liability insurance program trust account created in RCW 70A.325.020 may be used by the agency to carry out the purposes of this chapter. [2023 c 170 § 9.]

RCW 70A.545.090 Agency's duty to monitor program. (Expires July 1, 2030.) (1) The agency must monitor the performance of the state financial assurance program and, after the end of each biennium, publish a financial report on the program showing administrative and other expenses paid from the program.

(2) For each calendar quarter, the agency must determine the loss and surplus reserves required for the state financial assurance program. The agency must notify the department of revenue of this amount by the 15th day of each calendar quarter. [2023 c 170 § 10.]

RCW 70A.545.100 Rule-making authority—Agency—Department of ecology. (Expires July 1, 2030.) (1) The agency must adopt rules under chapter 34.05 RCW as necessary to carry out the provisions of this chapter. To accelerate remedial actions, the agency may implement the program through interpretative guidance pending adoption of rules.

(2) The department of ecology must adopt rules under chapter 34.05 RCW to enable use of the program authorized under this chapter to meet the financial responsibility requirements of chapter 70A.355 RCW. The rules must be consistent with and no less stringent than the federal regulations. [2023 c 170 § 11.]

RCW 70A.545.110 Review of agency decisions. (Expires July 1, 2030.) (1) A person may request a review by the director of the following agency decisions by submitting a written request, specifying the basis for the review, in accordance with procedures established by the agency:

- (a) A denial of program eligibility;
- (b) A denial of eligibility for payment under the program;
- (c) Amount of payment allowed for remedial actions;
- (d) Amount of payment allowed for a third-party claim; and
- (e) An agency request for cost repayment under RCW 70A.545.040.

(2) A person has 45 days after the decision to file a written request for review with the director. If the written request for review is received within 45 days, the director shall conduct an adjudicative hearing under chapter 34.05 RCW. [2023 c 170 § 12.]

RCW 70A.545.120 Limitation of liability/responsibility. (Expires July 1, 2030.) (1) Nothing in this chapter establishes or creates any liability or responsibility on the part of the agency or the state as administrators of the program to pay any costs for remedial actions or

third-party claims from any source other than the pollution liability insurance program trust account.

(2) The agency and the state as administrators of the program have no liability or responsibility to make payments for remedial action costs or third-party claims if the moneys in the account are insufficient.

(3) If the moneys in the account are insufficient to make the payments at the time the loss declaration form is filed, these requests must be paid in the order of filing at such time as moneys accrue in the account, except for releases from a petroleum underground storage tank that present an imminent threat to human health and the environment must receive first priority for receiving moneys to eliminate the imminent threat. [2023 c 170 § 13.]

RCW 70A.545.130 Immunity from civil liability. (Expires July 1, 2030.) Officers, employees, and authorized representatives of the agency and the state of Washington are immune from civil liability and no cause of action of any nature may arise from any act or omission in exercising powers and duties under this chapter. [2023 c 170 § 14.]

RCW 70A.545.140 Limit of chapter's authority. (Expires July 1, 2030.) (1) Nothing in this chapter limits the authority of the department of ecology under chapter 70A.305 RCW.
(2) Nothing in this chapter affects or modifies the obligations or liability of any person under any other state or federal law.
(3) The agency is authorized to recover the costs of remedial actions conducted by the agency under chapter 170, Laws of 2023, including the use of cost recovery options in the model toxics control act, chapter 70A.305 RCW, or other applicable state or federal laws. [2023 c 170 § 15.]

RCW 70A.545.900 Expiration of chapter. This chapter expires July 1, 2030. [2023 c 170 § 16.]