

Title 374 WAC

POLLUTION LIABILITY INSURANCE AGENCY

Chapters

- 374-20 Public records.
- 374-30 Reserves.
- 374-40 Practice and procedure.

Chapter 374-20 WAC PUBLIC RECORDS

WAC

- 374-20-010 Purpose.
- 374-20-020 Definitions.
- 374-20-030 Description of organization.
- 374-20-040 Public records available.
- 374-20-050 Records indexes.
- 374-20-060 Requests for public records.
- 374-20-070 Fees.
- 374-20-080 Statement of reasons for denial of public records request.
- 374-20-090 Reviews of denials of public records request.
- 374-20-100 Protection of public records.

WAC 374-20-010 Purpose. The purpose of this chapter is to implement those provisions of RCW 42.17-.250 through 42.17.320 relating to access to public records.

[Statutory Authority: RCW 42.17.250. 90-14-019 (Order 90-4), § 374-20-010, filed 6/27/90, effective 7/28/90.]

WAC 374-20-020 Definitions. (1) The terms "person," "public record," and "writing" have the same meanings as stated in RCW 42.17.020.

(2) "Agency" means the pollution liability insurance agency established pursuant to chapter 70.148 RCW. For purposes of WAC 374-20-030 through 374-20-100 inclusive, agency shall also mean staff or employees of the pollution liability insurance agency.

(3) "Director" means the director of the agency.

(4) "Public records officer" means the records manager of the agency.

(5) "Designee" means the employee of the agency designated by the director or the public records officer to serve as the public records officer at the agency in the absence of the officer.

[Statutory Authority: RCW 42.17.250. 90-14-019 (Order 90-4), § 374-20-020, filed 6/27/90, effective 7/28/90.]

WAC 374-20-030 Description of organization. (1) The location of the principal offices and the mailing address of the agency are:

Pollution Liability Insurance Agency
State of Washington
1015 - 10th Avenue, S.E.
Mailstop: EN-12
Olympia, Washington 98504

(2) The principal administrative and appointing officer of the agency is the director. The director may designate other officers or 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.

(3) The agency implements and administers the pollution liability insurance program established by chapter 70.148 RCW.

[Statutory Authority: RCW 42.17.250. 90-14-019 (Order 90-4), § 374-20-030, filed 6/27/90, effective 7/28/90.]

WAC 374-20-040 Public records available. (1) All public records of the agency are available for public inspection and copying pursuant to these rules and subject to subsections (2), (3), and (4) of this section.

(2) Availability of public records is subject to the exemptions and requirements of RCW 42.17.310, 42.17-.315, and 70.148.060.

(3) When a public record includes information the disclosure of which would lead to an unreasonable invasion of personal privacy, the agency shall delete such information before making the record available and the public records officer shall provide a written justification for the deletion.

(4) The agency shall, upon request for identifiable public records, make them promptly available to any person. If public records requested are not readily available for inspection, the agency shall notify the requester when and where the records will be available.

[Statutory Authority: RCW 42.17.250. 90-14-019 (Order 90-4), § 374-20-040, filed 6/27/90, effective 7/28/90.]

WAC 374-20-050 Records indexes. (1) Effective July 1, 1990, the agency will maintain an index or indexes of:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010(1) and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010(8) that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010(14) that were entered after June 30, 1990.

(2) Each index shall list the records they contain by date of issue, number, addressee, subject matter, or

other identifying information appropriate to the type of record.

(3) Each index shall be revised or updated no less frequently than quarterly.

(4) The indexes developed by or for the agency shall be available to all persons under the same rules and under the same conditions as are applied to public records available for inspection and shall be available at the offices of the agency.

[Statutory Authority: RCW 42.17.250. 90-21-051 (Order 90-9), § 374-20-050, filed 10/15/90, effective 11/15/90. Statutory Authority: RCW 42.17.250. 90-14-019 (Order 90-4), § 374-20-050, filed 6/27/90, effective 7/28/90.]

WAC 374-20-060 Requests for public records. (1) All requests for inspection or copying made in person at the agency shall be made on a form substantially as follows:

REQUEST FOR PUBLIC RECORDS

Date ----- Time -----
Name -----
Address -----

Representing -----
Description of Records:

I certify that lists of names obtained through this request for public records will not be used for commercial purposes.

Signature

Number of copies -----
Number of pages -----
Per page charge \$-----
Total charge \$-----

(2) All requests made in person may be made at the agency between the hours of 9:00 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m. Monday through Friday, excluding legal holidays.

(3) A request for inspection or copying of public records may be made by mail in a letter containing the following information:

(a) The name and address of the person making the request;

(b) The organization or group that the person represents;

(c) The time of day and the calendar date on which the person wishes to inspect the public records;

(d) A description of the public records requested;

(e) A statement whether access to copying equipment is desired;

(f) A phone number where the person can be reached in case the public records officer or designee needs to contact the person for further description of the material or any other reason;

(g) A statement that the record will not be used for commercial purposes.

(4) All requests by mail should be received at the agency at least three business days before the requested date of inspection to allow the public records officer or designee to make certain the requested records are available and not exempt and, if necessary, to contact the person requesting inspection.

(5) The agency may in its discretion fill requests made by telephone.

[Statutory Authority: RCW 42.17.250. 90-14-019 (Order 90-4), § 374-20-060, filed 6/27/90, effective 7/28/90.]

WAC 374-20-070 Fees. No fee shall be charged for inspection of public records. The agency may charge a reasonable fee, determined from time to time by the director, for providing copies of typed, printed, or written material of a maximum size of 8 1/2" by 14". The fee shall be the amount necessary to reimburse the agency for its actual costs incident to such copying. Fees for copies of nonstandard printed material or public records in nonwritten form may not exceed the agency's actual costs incident to such copying.

[Statutory Authority: RCW 42.17.250. 90-14-019 (Order 90-4), § 374-20-070, filed 6/27/90, effective 7/28/90.]

WAC 374-20-080 Statement of reasons for denial of public records request. When the agency refuses, in whole or in part, a written request for inspection of any public record, it shall include a statement of the specific exemption authorizing the refusal and a brief explanation of how the exemption applies to the record withheld.

[Statutory Authority: RCW 42.17.250. 90-14-019 (Order 90-4), § 374-20-080, filed 6/27/90, effective 7/28/90.]

WAC 374-20-090 Reviews of denials of public records request. Upon denial of a request for inspection of a public record, in whole or in part, the public records officer or other staff member denying the request shall refer the denial to the director or the director's designee for review. The director or the director's designee shall immediately review the denial and either affirm or reverse it. Such review shall be deemed complete at the end of the second business day following the denial of inspection and shall constitute final agency action for the purpose of review. The final decision shall be sent to the person requesting inspection promptly following the decision.

[Statutory Authority: RCW 42.17.250. 90-14-019 (Order 90-4), § 374-20-090, filed 6/27/90, effective 7/28/90.]

WAC 374-20-100 Protection of public records. In order to protect the public records of the agency, the following guidelines shall be adhered to by any person inspecting such public records:

(1) No public records shall be removed from the agency's premises.

(2) Inspection of any public record shall be conducted in the presence of a designated agency employee.

(3) No public records may be marked or defaced in any manner during inspection.

(4) Public records which are maintained in a file or jacket, or chronological order, may not be dismantled except for purposes of copying and then only by the public records officer or designee.

(5) Access to file cabinets, shelves, vaults, and other storage areas is restricted to office personnel, unless other arrangements are made with the public records officer or designee.

[Statutory Authority: RCW 42.17.250. 90-14-019 (Order 90-4), § 374-20-100, filed 6/27/90, effective 7/28/90.]

Chapter 374-30 WAC RESERVES

WAC

374-30-010	Authority and purpose.
374-30-020	Definitions.
374-30-030	Loss reserves—Establishment and adjustment.
374-30-040	Loss reserves—Use and disposition.
374-30-050	Surplus reserves—Establishment and adjustment.
374-30-060	Surplus reserves—Use and reestablishment.

WAC 374-30-010 Authority and purpose. This chapter is promulgated under the authority conferred by RCW 70.148.040. The purpose of this chapter is to implement those provisions of chapter 70.148 RCW as amended by Substitute House Bill No. 2609 (chapter 64, Laws of 1990) relating to the establishment of reserves for the pollution liability insurance program.

[Statutory Authority: RCW 70.148.040. 90-14-020 (Order 90-5), § 374-30-010, filed 6/27/90, effective 8/1/90.]

WAC 374-30-020 Definitions. Unless the context requires otherwise, the following definitions shall apply:

(1) "Claim" means a properly filed request for insurance benefits made by the holder of a pollution liability insurance policy issued by an insurer with whom the pollution liability insurance program has executed a contract for reinsurance.

(2) "Director" means the director of the pollution liability insurance agency and program appointed by the governor pursuant to chapter 70.148 RCW, or a person designated to act on the director's behalf.

(3) "Insurer" means a commercial property and casualty insurance company, risk retention group, or group of insurance companies or risk retention groups.

(4) "Loss reserve" means the amount traditionally set aside by insurers for costs and expenses related to claims that have been made.

(5) "Program" means the pollution liability insurance program created in chapter 70.148 RCW.

(6) "Surplus reserve" means the amount traditionally set aside by insurers to provide financial protection from unexpected losses and to serve, in part, as a measure of an insurer's net worth.

(7) "Unrestricted trust account balance" means the cash balance in the pollution liability insurance program trust account created in RCW 70.148.020 less reserves established under this chapter.

[Statutory Authority: RCW 70.148.040. 90-14-020 (Order 90-5), § 374-30-020, filed 6/27/90, effective 8/1/90.]

WAC 374-30-030 Loss reserves—Establishment and adjustment. (1) When the director is notified by an insurer with whom a reinsurance contract has been entered into that claims have been made by policyholders, the director shall order the establishment of a loss reserve for each claim. The loss reserves will consist of an accounting transfer from the unrestricted trust account balance of funds sufficient to cover the program's estimated reinsurance reimbursement obligation for costs and expenses for each claim as reported by the insurer.

(2) In the event that the costs and expenses associated with a claim change during the claim adjustment and settlement process, the director shall order that the loss reserve established for that claim be adjusted to reflect changes in the program's reinsurance reimbursement obligation. Such adjustments shall consist of additional transfers of funds from or to the unrestricted trust account balance as required in each case.

[Statutory Authority: RCW 70.148.040. 90-14-020 (Order 90-5), § 374-30-030, filed 6/27/90, effective 8/1/90.]

WAC 374-30-040 Loss reserves—Use and disposition. (1) When the adjustment and settlement of claims for which the program has provided reinsurance has been completed, the insurer shall notify the director of the terms of final settlement and shall provide such documentation as the director may require. The director shall order that the insurer be reimbursed for those costs and expenses in excess of the insurer's contractual net retention that are properly due to the insurer under the the reinsurance contract. Such payments will be made from the funds set aside as loss reserves for the pertinent claim.

(2) In the event that the program's final reinsurance obligation for any claim differs from the amount set aside as a loss reserve for that claim, adjustment shall be made as follows:

(a) If the program's reinsurance obligation is greater than the amount set aside as a loss reserve, the additional funds required shall be withdrawn from the unrestricted trust account balance.

(b) If the program's reinsurance obligation is less than the amount set aside as a loss reserve, the unutilized funds shall be restored to the unrestricted trust account balance.

[Statutory Authority: RCW 70.148.040. 90-14-020 (Order 90-5), § 374-30-040, filed 6/27/90, effective 8/1/90.]

WAC 374-30-050 Surplus reserves—Establishment and adjustment. The director shall establish a surplus reserve, consisting of an accounting segregation of funds from the unrestricted trust account balance, for the program in order to protect the program and the state against unexpected catastrophic losses and in order to

establish a financial foundation for the program that will be acceptable to commercial insurers and insurance industry regulatory authorities. The surplus reserve shall be established as soon as practicable following the effective date of this rule, and shall be adjusted by the director from time to time as needed. In establishing and adjusting the surplus reserve, the director shall consider the following:

(1) The required minimum capitalization for insurers and reinsurers established in chapter 48.05 RCW.

(2) Similar requirements set forth in the laws and rules of the state or states in which the insurer or insurers for whom the program is providing reinsurance are domiciled.

(3) Generally accepted standards of financial soundness and solvency applicable to insurance and reinsurance.

(4) Actuarial analysis and information concerning likely levels of reinsurance cost and expense exposure of the program over time.

(5) Advice and information from the Washington insurance commissioner, insurance industry advisors, the pollution liability insurance program technical advisory committee, and other knowledgeable persons.

(6) The actual loss and expense experience of insurers and the program as this develops over time.

(7) Any additional information that the director may deem pertinent and relevant.

[Statutory Authority: RCW 70.148.040. 90-14-020 (Order 90-5), § 374-30-050, filed 6/27/90, effective 8/1/90.]

WAC 374-30-060 Surplus reserves—Use and reestablishment. Funds set aside as surplus reserves shall be used only for payment of reinsurance costs and expenses resulting from natural disasters, catastrophes, or other conditions not foreseen or expected. Such payments may be made only by order of the director. In the event that such use is made of any or all of the surplus reserves established by this rule, the surplus reserve balance shall be restored to required levels out of program revenues as expeditiously as possible.

[Statutory Authority: RCW 70.148.040. 90-14-020 (Order 90-5), § 374-30-060, filed 6/27/90, effective 8/1/90.]

Chapter 374-40 WAC PRACTICE AND PROCEDURE

WAC

374-40-010	Adoption of model rules.
374-40-020	Agency defined.
374-40-030	Appearance and practice before agency—Who may appear.
374-40-040	Appearance and practice before agency—Appearance by former employee of agency or former member of attorney general's staff.
374-40-050	Appearance and practice before agency—Former employee as expert witness.

WAC 374-40-010 Adoption of model rules. The model rules of procedure contained in chapter 10-08 WAC, as they exist now or may be hereafter amended are, to the extent they are not inconsistent with the rules

contained in this chapter, adopted as the rules of procedure before this agency. The rules in this chapter will, to the extent of any conflict with the model rules of procedure, be deemed to supersede the conflicting model rules of procedure.

[Statutory Authority: RCW 70.148.040. 90-18-057 (Order 90-7), § 374-40-010, filed 8/31/90, effective 10/1/90.]

WAC 374-40-020 Agency defined. Unless the context requires otherwise, "agency" means the pollution liability insurance agency created pursuant to chapter 70.148 RCW.

[Statutory Authority: RCW 70.148.040. 90-18-057 (Order 90-7), § 374-40-020, filed 8/31/90, effective 10/1/90.]

WAC 374-40-030 Appearance and practice before agency—Who may appear. No person may appear in a representative capacity before the agency or its designated hearing officer other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by Washington state law;

(3) A bona fide officer, partner, or full-time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership, or corporation.

[Statutory Authority: RCW 70.148.040. 90-18-057 (Order 90-7), § 374-40-030, filed 8/31/90, effective 10/1/90.]

WAC 374-40-040 Appearance and practice before agency—Appearance by former employee of agency or former member of attorney general's staff. No former employee of the agency or member of the attorney general's staff may at any time after severing his or her employment with the agency or the attorney general appear in a representative capacity on behalf of other parties in a formal proceeding wherein he or she previously took an active part as a representative of the agency as provided by RCW 42.22.040.

[Statutory Authority: RCW 70.148.040. 90-18-057 (Order 90-7), § 374-40-040, filed 8/31/90, effective 10/1/90.]

WAC 374-40-050 Appearance and practice before agency—Former employee as expert witness. No former employee of the agency shall at any time after severing his or her employment with the state of Washington appear, except with the written permission of the agency, as an expert witness on behalf of other parties in a formal proceeding wherein he or she previously took an active part in the investigation as a representative of the agency.

[Statutory Authority: RCW 70.148.040. 90-18-057 (Order 90-7), § 374-40-050, filed 8/31/90, effective 10/1/90.]