

Title 374 WAC

POLLUTION LIABILITY INSURANCE AGENCY

Chapters

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- 374-30** Reserves.
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Chapter 374-20 WAC PUBLIC RECORDS

WAC

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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 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.]

Chapter 374-50 WAC INSURANCE ELIGIBILITY ASSESSMENT REIMBURSEMENT

WAC

374-50-010	Authority and purpose.
374-50-020	Definitions.

374-50-030	Eligibility for reimbursement program—Who may apply.
374-50-040	Eligibility criteria.
374-50-050	Reimbursement limits.
374-50-060	Program schedule.
374-50-070	Application procedure.
374-50-080	Payment of reimbursement.
374-50-090	Other restrictions.

WAC 374-50-010 Authority and purpose. This chapter is promulgated under the authority of RCW 70.148.040. Its purpose is to implement those provisions of RCW 70.148.035 relating to covering insurers' costs of determining the eligibility of applicants for pollution liability insurance under the pollution liability program.

[Statutory Authority: RCW 70.148.040. 92-09-091 (Order 92-02), § 374-50-010, filed 4/17/92, effective 5/18/92.]

WAC 374-50-020 Definitions. Unless the context requires otherwise, the following definitions shall apply:

(1) "Agency" means the pollution liability insurance agency created by chapter 70.148 RCW.

(2) "Director" means the director of the pollution liability insurance agency.

(3) "Insurer" means a commercial property and casualty insurance company or risk retention group with whom the agency has a contract to provide reinsurance.

(4) "Insurance eligibility assessment" means those actions required to determine the eligibility of an owner or operator for pollution liability insurance coverage by an insurer including, but not limited to, evaluation of inventory control records, tightness testing of tanks and connected piping, soil sampling, and other physical or chemical tests.

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

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

(7) "Person" means an individual, trust, firm, joint stock company, corporation (including government corporations), partnership, association, consortium, joint venture, commercial entity, state, municipality, commission, political subdivision of a state, interstate body, the federal government or any department or agency of the federal government, or an Indian tribe or agency or entity of an Indian tribe.

(8) "Substantial economic impact" means elimination or substantial reduction of the availability of petroleum products or other goods or services in which petroleum products are a necessary part of the production or distribution process within a community or an area resulting from closure of one or more petroleum underground storage tanks.

[Statutory Authority: RCW 70.148.040. 92-09-091 (Order 92-02), § 374-50-020, filed 4/17/92, effective 5/18/92.]

WAC 374-50-030 Eligibility for reimbursement program—Who may apply. Any person who is required to demonstrate financial responsibility for one or more petroleum underground storage tanks under 40 C.F.R. Parts 280.90, 280.91, and 280.92 (the federal underground storage tank regulations), chapter 90.76 RCW, or other applicable laws, ordinances, or rules and who satisfies the criteria set forth in WAC 374-50-040 may apply for assistance in

covering an insurer's costs of an insurance eligibility assessment under the program established by this chapter, except for:

(1) Persons whose compliance dates under 40 C.F.R. Part 280.91 as now or hereafter amended, chapter 90.76 RCW or other laws, ordinances, or rules precede the effective date of this chapter;

(2) The federal government or entities of the state of Washington;

(3) The state of Washington or entities of the state of Washington;

(4) Indian tribes or entities of Indian tribes;

(5) Counties, cities, towns, or special purpose districts including, but not limited to, fire districts, hospital districts, library districts, metropolitan park districts, park and recreation districts, school districts, or entities of such governmental units; and

(6) Owners or operators of farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

[Statutory Authority: RCW 70.148.040. 92-09-091 (Order 92-02), § 374-50-030, filed 4/17/92, effective 5/18/92.]

WAC 374-50-040 Eligibility criteria. (1) Persons eligible to apply for participation in the program established by this chapter must satisfy the following criteria:

(a) The applicant is eligible under WAC 374-50-030;

(b) The applicant is the owner or operator of one or more petroleum underground storage tanks located in the state of Washington;

(c) The applicant's tank or tanks are registered with the department of ecology and all required fees due under chapter 90.76 RCW, local ordinances if applicable, and any other applicable laws, ordinances, or fees have been paid;

(d) The applicant is in compliance with all applicable technical and operating requirements of 40 C.F.R. Part 280, Subparts B, C, and D, applicable requirements of chapter 90.76 RCW, and rules adopted thereunder, and other applicable laws, ordinances, or rules effective on the date of application;

(e) The applicant is responsible for demonstrating financial responsibility for the tank or tanks under 40 C.F.R. Parts 280.90, 280.91, and 280.92, chapter 90.76 RCW or other laws, ordinances, or rules;

(f) The applicant has applied for pollution liability insurance from an insurer with whom the agency has a contract to provide reinsurance;

(g) The applicant affirms that he or she intends to purchase such insurance coverage if the tank, tanks, site, or sites to be insured satisfy the underwriting requirements of the insurer; and

(h) The applicant's net worth is five hundred thousand dollars or less, except as provided for in subsection (2) of this section.

(2) Additional consideration may be given to applications for reimbursement of insurance eligibility assessment costs when:

(a) The applicant fails to satisfy the net worth criterion in subsection (1)(h) of this section, but can demonstrate through income tax returns or other acceptable means that such costs would result in unfair economic hardship; or

(b) The applicant demonstrates that closure of the petroleum underground storage tank or tanks would impose a substantial economic impact upon the community or area in which it is located.

[Statutory Authority: RCW 70.148.040, 92-09-091 (Order 92-02), § 374-50-040, filed 4/17/92, effective 5/18/92.]

WAC 374-50-050 Reimbursement limits. (1) Insurers will be reimbursed for insurance eligibility assessment costs incurred on behalf of persons whose applications for participation in the program established by this chapter are approved according to the following schedule:

(a) For costs incurred on behalf of persons with net worth of two hundred fifty thousand dollars or less — seventy-five percent of the first three thousand five hundred dollars of eligible costs up to a reimbursement limit of two thousand six hundred twenty-five dollars;

(b) For costs incurred on behalf of persons with net worth greater than two hundred fifty thousand dollars, but less than or equal to five hundred thousand dollars — fifty percent of the first three thousand five hundred dollars of eligible costs up to a reimbursement limit of one thousand seven hundred fifty dollars;

(c) For costs incurred on behalf of persons with net worth greater than five hundred thousand dollars whose applications for participation in this program have been accepted on the basis of WAC 374-50-040(2) — twenty-five percent of the first three thousand five hundred dollars of eligible costs up to a reimbursement limit of eight hundred seventy-five dollars.

(2) Within the limits of subsection (1) of this section, reimbursement for the following specific insurance eligibility assessment costs will be made at the indicated percentages of the following maximum amounts:

(a) Inventory control records evaluation — one hundred fifty dollars per site;

(b) Tank tightness testing — five hundred dollars per tank;

(c) Line tightness testing — one hundred fifty dollars per product line; and

(d) Soil or ground water sampling — two hundred fifty dollars per sample.

(3) It is the intent of the program established by this chapter to assist as many owners or operators of petroleum underground storage tanks with limited economic resources as possible. Therefore, not more than one application for participation in the program established by this chapter will be approved for each such natural person or entity, regardless of the number of underground storage tanks owned or operated, whether directly or indirectly.

[Statutory Authority: RCW 70.148.040, 92-09-091 (Order 92-02), § 374-50-050, filed 4/17/92, effective 5/18/92.]

WAC 374-50-060 Program schedule. (1) The program established by this chapter will proceed according to the following schedule: Applications will be accepted for those owners and operators with twelve or fewer tanks beginning on the effective date of chapter 374-50 WAC until the official financial responsibility compliance date established by the United States Environmental Protection Agency

or the Washington department of ecology, whichever date is first.

(2) Approval of applications and payments are contingent upon the availability of revenue. The director reserves the right to order termination of the program at any time that reimbursement commitments or payments exhaust the revenue available for the reimbursement program.

[Statutory Authority: RCW 70.148.040, 92-09-091 (Order 92-02), § 374-50-060, filed 4/17/92, effective 5/18/92.]

WAC 374-50-070 Application procedure. (1) Information concerning the insurance eligibility assessment cost reimbursement program and forms or materials necessary for application may be obtained from:

Pollution Liability Insurance Agency
PO BOX 40930
1015-10th Avenue S.E.
Olympia, WA 98504-0930

(2) Application for participation in the program established by this chapter requires preparation and submission of the following: A completed asset and liability statement on a form provided by the agency.

(3) The agency will act upon applications as expeditiously as feasible unless additional information is required. If this is the case, the applicant will be notified and the application will be acted upon as expeditiously as feasible after receipt of the required additional information by the agency.

(4) Applicants will be notified of agency approval or disapproval by return mail. Persons whose applications are disapproved will be informed of the reason for such action.

(5) An applicant who disagrees with the disapproval of his or her application may request review of the agency decision by the director. The applicant will be notified by mail of the director's decision as expeditiously as feasible after receipt by the agency of the request for review unless additional time is required. If additional time is required in order for the review to be completed, the applicant will be notified by mail.

[Statutory Authority: RCW 70.148.040, 92-09-091 (Order 92-02), § 374-50-070, filed 4/17/92, effective 5/18/92.]

WAC 374-50-080 Payment of reimbursement. (1) Reimbursement of insurers for approved insurance eligibility assessment costs incurred on behalf of applicants accepted under the program established by this chapter will be made as expeditiously as feasible after receipt by the agency of the following information:

(a) A copy of the notification of agency approval of the applicant's application for the program established by this chapter;

(b) A copy of the invoice(s) from the person or firm performing the insurance eligibility assessment services with a breakdown showing the cost of each test or service performed separately and an indication thereon, or by separate receipt, that payment in full has been made by the insurer;

(c) A copy of the face sheet of an issued pollution liability insurance policy if the applicant's tank, tanks, site,

or sites have satisfied the insurer's underwriting requirements.

(2) Persons on whose behalf reimbursement under the program created by this chapter has been made are required to maintain their insurance coverage in force for at least one year. If insurance coverage is not maintained for this period, the person is required to return a pro rata share of the reimbursement to the agency, with the share being that fraction of one year for which insurance coverage was not maintained in force.

(3) Persons who have applied for insurance in good faith, but whose tank, tanks, site, or sites fail to satisfy the insurer's underwriting requirements will not be required to return reimbursement payments.

[Statutory Authority: RCW 70.148.040. 92-09-091 (Order 92-02), § 374-50-080, filed 4/17/92, effective 5/18/92.]

WAC 374-50-090 Other restrictions. (1) Persons whose applications for the program established by this chapter are accepted will be responsible for the cost of all fuels or products required for tank or connected piping tightness testing.

(2) All testing and sampling must be performed by persons who are registered with the Washington department of ecology.

[Statutory Authority: RCW 70.148.040. 92-09-091 (Order 92-02), § 374-50-090, filed 4/17/92, effective 5/18/92.]

Chapter 374-60 WAC

UNDERGROUND STORAGE TANK COMMUNITY ASSISTANCE PROGRAM

WAC

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374-60-080	Eligibility—Local government entities.
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374-60-110	Funding.
374-60-120	Grant management.

WAC 374-60-010 Authority and purpose. The purpose of this chapter is to clarify eligibility criteria and requirements for the conduct of the underground storage tank community assistance program as set forth in chapter 70.148 RCW.

This chapter recognizes the hardship posed by loss of local sources of petroleum products faced by rural and remote communities, local governments and rural hospitals due to an inability to meet U.S. Environmental Protection Agency and department of ecology regulations and requirements for petroleum underground storage tanks. The underground storage tank community assistance program will award grants to qualifying privately owned and operated sources of petroleum products, local government entities, and rural hospitals meeting vital government, public health, education or safety needs for replacement or upgrading and,

if required, clean up of underground petroleum storage tank sites.

[Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-010, filed 11/27/91, effective 12/28/91.]

WAC 374-60-020 Definitions. (1) "Agency" means the Washington state pollution liability insurance agency.

(2) "Charity care" means necessary hospital health care rendered to indigent persons, to the extent that the persons are unable to pay for the care or to pay deductibles or co-insurance amounts required by a third party payor, as determined by the Washington state hospital commission. (Defined in RCW 70.39.020.)

(3) "Cleanup" means any remedial action taken that complies with WAC 173-340-450 and any remedial action taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with WAC 173-340-360.

(4) "Community assistance program" means the program established by the Washington state legislature under the provision of chapter 70.148 RCW to provide financial assistance grants to:

(a) Private owners and operators of underground petroleum storage tanks;

(b) Local governmental entities, and;

(c) Rural hospitals.

(5) "Director" means the director of the Washington state pollution liability insurance agency.

(6) "Local government entity" means a unit of local government, either general purpose or special purpose, and includes but is not limited to, counties, cities, towns, school districts and other governmental and political subdivisions. The local government unit must perform a public purpose and either:

(a) Receive an annual appropriation;

(b) Have taxing power; and

(c) Derive authority from state or local government law enforcement power.

(7) "Operator" means any person in control of, or having responsibility for, the daily operation of a petroleum underground storage tank system. (Defined in RCW 70.148.010.)

(8) "Owner" means any person who owns a petroleum underground storage tank. (Defined in RCW 70.148.010.)

(9) "Petroleum" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute) and includes gasoline, kerosene, heating oils and diesel fuels. (Defined in RCW 70.148.010.)

(10) "Private owner or operator" means any person, corporation, partnership or business that owns or operates one or more regulated petroleum underground storage tanks maintained for the purpose of providing petroleum products for retail sale to the public.

(11) "Release" means the emission, discharge, disposal, dispersal, seepage, or escape of petroleum from an underground storage tank into or upon land, groundwater, surface water, subsurface soils, or the atmosphere. (Defined in RCW 70.148.010.)

(12) "Remote rural community" means a geographic area outside the boundaries of an urban area of 10,000 or

more of population, and which is either (1) in an incorporated city or town located at a distance from an incorporated city or town or urban area of 10,000 or more of population or, (2) in an area outside of an incorporated city or town and at a distance from an incorporated city or town or urban area of 10,000 or more of population.

(13) "Rural hospital" means a hospital located anywhere in the state except the following areas:

(a) The counties of Snohomish (including Camano Island), King, Kitsap, Pierce, Thurston, Clark and Spokane;

(b) Areas within a twenty-five mile radius of an urban area with a population exceeding thirty thousand persons; and

(c) Those cities or city-clusters located in rural counties but which for all practical purposes are urban. These areas are Bellingham, Aberdeen-Hoquiam, Longview-Kelso, Wenatchee, Yakima, Sunnyside, Richland-Kennewick-Pasco, and Walla Walla. (Defined in RCW 18.89.020.)

(14) "Serious financial hardship" means:

(a) For a private sector applicant, that the applicant can provide conclusive evidence that the business and/or business operator(s), business owner(s) having a 20% or greater interest in the business or other persons with a beneficial interest in the business' profits do not have the cash, cash equivalents or borrowing capacity to bring a petroleum underground storage tank system into compliance with all federal and state underground storage tank regulations and requirements scheduled to be in effect on December 22, 1998.

(b) For a public sector applicant, that the applicant can provide conclusive evidence that the unit of government does not have adequate fund balances, debt capacity or other local revenue generating options to bring a petroleum underground storage tank system into compliance with all federal and state underground storage tank regulations and requirements scheduled to be in effect on December 22, 1998; and

(c) For a rural hospital, that the applicant can provide conclusive evidence that the rural hospital does not have the cash, cash equivalents or borrowing capacity to bring a petroleum underground storage tank system into compliance with all federal and state underground storage tank regulations and requirements scheduled to be in effect on December 22, 1998.

(15) "Underground storage tank (UST)" means any one or combination of tanks, including underground pipes connected to the tank, that is used to contain an accumulation of petroleum and the volume of which (including the volume of underground pipes connected to the tank) is ten percent or more beneath the surface of the ground. (Defined in RCW 70.148.010.)

(16) "UST site" means the location at which underground storage tanks are in place or will be placed. An UST site encompasses all of the property with a contiguous ownership that is associated with the use of the tanks. (Defined in WAC 173-360-120.)

(17) "Vital local government, public health, education or safety need" means an essential or indispensable service provided by government for citizens.

[Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-020, filed 11/27/91, effective 12/28/91.]

WAC 374-60-030 Appeals. An applicant may appeal a decision made under the UST community assistance program to the director. The director shall conduct an adjudicative hearing proceeding under chapter 34.05 RCW. (1990 c 383, 9; c 383, 9.)

[Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-030, filed 11/27/91, effective 12/28/91.]

WAC 374-60-040 Communications. All communications with the pollution liability insurance agency shall be addressed to:

Director
Pollution Liability Insurance Agency
1015 10th Avenue SE
PO BOX 40930
Olympia WA 98504-0930

[Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-040, filed 11/27/91, effective 12/28/91.]

WAC 374-60-050 Documents—When filed. No applications for assistance, pleadings, or other documents submitted under the underground storage tank community assistance program shall be considered filed with, or served on, the pollution liability insurance agency until it is received at the offices of said agency at 1015 10th Avenue SE, PO BOX 40930, Olympia WA 98504-0930.

[Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-050, filed 11/27/91, effective 12/28/91.]

WAC 374-60-060 Applications. (1) Applications for assistance under the underground storage tank community assistance program shall be made on forms furnished by the agency in accordance with their instructions. All applications shall be legible, contain all the information required and shall be accompanied by all required documents and exhibits.

(a) Applications which are illegible, incomplete, or which fail to include all necessary information, documents or exhibits, or which are otherwise not in compliance with these rules, may be rejected by the agency.

(b) The agency may ignore defects in applications which are immaterial or insubstantial.

(2) Separate and different applications will be prepared for:

- (a) Private owners and operators;
- (b) Local government entities; and
- (c) Rural hospitals.

(3) Applications will be prepared in two parts:

(a) Part I of the application is designed to determine if the applicant meets certain eligibility criteria established for the program.

(b) Part II of the application is designed to determine if the applicant meets the financial eligibility criteria established for a grant, and requires detailed financial information, submission of a construction proposal, and certification by a local government entity of the vital local government, public health, education or safety need met by the continued operation of the UST(s).

(4) The director shall provide forms to local government entities for certification that continued operation of UST(s)

by the private owners and operators is necessary to meet vital local government, public health, education or safety needs. Such certification shall consist of a local government resolution certifying:

(a) That other petroleum providers are remote from the community;

(b) That the applicant is capable of faithfully fulfilling the agreement required for financial assistance;

(c) The specific vital need or needs the owner or operator meets; and

(d) Designating the local official who will be responsible for negotiating the contract for provision of cost-plus petroleum products to the local governmental entity.

(5) The director shall provide forms to local government entities for certification that maintaining continued operation of the petroleum UST(s) owned by the local government meets a vital local public health, education or safety need. Such certification shall consist of a local government resolution certifying:

(a) That continued operation of the UST(s) meets a vital local government, public health, education or safety need; and

(b) That a practical and viable funding alternative for the replacement, upgrade or consolidation of the UST(s) does not exist.

(6) The director shall provide forms to local government entities for certification that UST(s) operated by rural hospitals meet vital public health, and safety needs. Such certification shall consist of a local government resolution certifying that the continued operation of the UST(s) by the rural hospital is necessary.

[Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-060, filed 11/27/91, effective 12/28/91.]

WAC 374-60-070 Eligibility—Private owners and operators. Private owners and operators, or a combination thereof, of an UST site may be eligible for an underground storage tank community assistance program grant if they meet the following requirements:

(a) Be the owner or operator of an UST(s) located in the state of Washington which is regulated by the U.S. Environmental Protection Agency and the department of ecology and for which proof of financial responsibility is currently or will be required;

(b) Own or operate a business selling petroleum products to the public in a remote rural area;

(c) Demonstrate that the UST(s) is registered with the department of ecology;

(d) Demonstrate that the replacement or upgrading of the UST(s) and cleanup of the site would, without financial assistance, create serious financial hardship;

(e) Demonstrate that continued operation of the UST(s) meets a vital local government, public health or safety need, as evidenced by a local government entity's certification; and

(f) Provide proof that the UST(s) is insured against pollution liability or that application for pollution liability insurance has been made. Applicants must apply for insurance with one of the two insurers reinsured by the agency.

[Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-070, filed 11/27/91, effective 12/28/91.]

WAC 374-60-080 Eligibility—Local government entities. A local government may be eligible for an underground storage tank community assistance program grant if it meets the following requirements:

(a) Be the owner or operator of an UST(s) located in the state of Washington which is regulated by the U.S. Environmental Protection Agency and the department of ecology and for which proof of financial responsibility is currently or will be required;

(b) Demonstrate that the UST(s) is registered with the department of ecology;

(c) Demonstrate that the replacement or upgrading of the UST(s) and cleanup of the site would, without financial assistance, create serious financial hardship;

(d) Demonstrate that continued operation of the UST(s) meets a vital local government, public health, education or safety need; and

(e) Provide proof that the UST(s) is insured against pollution liability or that application for pollution liability insurance has been made. Applicants must apply for insurance with one of the two insurers reinsured by the agency.

[Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-080, filed 11/27/91, effective 12/28/91.]

WAC 374-60-090 Eligibility—Rural hospitals. A rural hospital may be eligible for an underground storage tank community assistance program grant if it meets the following requirements:

(a) Be the owner or operator of an UST(s) located in the state of Washington which is regulated by the U.S. Environmental Protection Agency and the department of ecology and for which proof of financial responsibility is currently or will be required;

(b) Demonstrate that the UST(s) is registered with the department of ecology;

(c) Demonstrate that the replacement or upgrading of the UST(s) and cleanup of the site would, without financial assistance, create serious financial hardship;

(d) Demonstrate that continued operation of the UST(s) meets a vital local government, public health or safety need as evidenced by a local governmental entity's certification; and

(e) Provide proof that the UST(s) is insured against pollution liability or that application for pollution liability insurance has been made. Applicants must apply for insurance with one of the two insurers reinsured by the agency.

[Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-090, filed 11/27/91, effective 12/28/91.]

WAC 374-60-100 Evaluation. (1) Evaluation of applications for the UST community assistance program will be based on an assessment of eligibility, based on the requirements included in chapter 70.148 RCW.

(2) Applications of private owners and operators will be judged on three criteria. Evaluations will be based on:

(a) The financial condition of both the business and its owner(s) and operator(s) to determine if serious financial hardship exists;

(b) The vital local government or public health or safety need(s) provided by the business; and

(c) Location and type of business.

(3) Applications of local government entities will be judged on three criteria. Evaluations will be based on:

(a) The financial condition of the local government entity to determine if a serious financial hardship exists;

(b) The vital local public health, education, or safety need(s) met by the continued operation of the UST(s); and

(c) Priority shall be given to local government entities which consolidate multiple operational UST(s) into as few sites as possible.

(4) Applications of rural hospitals will be judged on two criteria. Evaluations will be based on:

(a) The financial condition of the hospital to determine if a serious financial hardship exists; and

(b) The vital local public health or safety need(s) met by the continued operation of the UST(s).

(5) Evaluation of applications will be conducted by screening teams that will assess and score Part I of the application, and by screening teams that will assess and score Part II of the application. The assessments of the screening teams will be compiled and presented with a recommendation to the agency director. The director shall review applications with the pollution liability insurance agency technical advisory committee and consult with the technical advisory committee prior to the announcement of the awarding of grants.

[Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-100, filed 11/27/91, effective 12/28/91.]

WAC 374-60-110 Funding. (1) Funds for the UST community assistance program shall be made available from the pollution liability insurance program trust account in accordance with the provision of chapter 70.148 RCW.

(2) The director may expend no more than fifteen million dollars (\$15,000,000.00) for the UST community assistance program.

(3) Grants shall be limited to no more than one hundred fifty thousand dollars (\$150,000.00) in value for any one UST site of which amount no more than seventy-five thousand dollars (\$75,000.00) in value may be provided for cleanup of existing contamination caused by petroleum from the tank(s).

(4) Grants shall be limited to only that amount necessary to supplement the applicant's financial resources.

(5) No grant may be used for any purpose other than for replacement or upgrading of UST(s), or for cleanup of existing contamination caused by petroleum from the tank(s). The director may, however, provide financial assistance for the establishment of a new local government UST site if it is the result of consolidation of multiple operational UST sites into as few sites as possible. In such case, the grant shall be only for the amount of construction of the new UST site. The removal of the old UST(s) and any cleanup associated with the removal shall be the responsibility of the local government.

[Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-110, filed 11/27/91, effective 12/28/91.]

WAC 374-60-120 Grant management. (1) Successful applicants will be notified by letter of the award of a grant. Entitlement to a grant is finalized only after a contract has been finalized between the agency and the grant recipient, and a contract has been finalized between the agency, grant recipient and the contractor performing the replacement or upgrading of the UST(s).

(a) Contracts may be entered only after all program eligibility requirements have been met, funds are available and the application and evaluation process has been completed to the satisfaction of the agency.

(b) Each contract becomes effective only with the signing of both required contracts. The day of the signing establishes the beginning date of the project. No costs incurred prior to that date are eligible for payment under the grant unless specific provision is made in the grant contract for such costs.

(2) The contract between the agency and a private owner and/or operator shall contain:

(a) An agreement assuring the state of Washington that the business, including the UST site, will be maintained for the retail sale of petroleum products to the public for at least fifteen (15) years after the grant is awarded;

(b) An agreement to sell petroleum products to local governmental entities on a cost-plus basis;

(c) An agreement to comply with all technical and financial responsibility regulations of the U.S. Environmental Protection Agency and the department of ecology;

(d) An agreement awarding the state of Washington a real property lien ensuring repayment of grant funds should any of the above conditions be violated. Such lien is to be binding on all heirs, successors or assignees of the grantee; and

(e) An agreement that should the grantee or any successor fail to adhere to all the terms of the contract through willful act, the amount of the grant shall immediately become due and payable to the state of Washington.

(3) The contract between the agency and a local government shall contain an agreement to comply with all technical and financial responsibility regulations of the U.S. Environmental Protection Agency and the department of ecology.

(4) The contract between the agency and a rural hospital shall contain:

(a) An agreement to comply with all technical and financial responsibility regulations of the U.S. Environmental Protection Agency and the department of ecology; and

(b) An agreement to provide charity care in a dollar amount equivalent to the financial assistance provided under the underground storage tank community assistance program. The period of time for the charity care to be accomplished will be established by the agency in consultation with the department of health, but will not exceed fifteen years.

(5) Contracts between the agency, grantees and contractors shall contain terms covering payments, conditions of work and contaminated soil and water remediation procedures.

(6) If the grantee elects pollution liability insurance as the method for meeting financial responsibility, the insurance policy must name the pollution liability insurance agency as a "loss payee." If another method of demonstrating financial responsibility is selected, there must exist a provision for the

agency to place an appropriate encumbrance on that document.

(7) Annually, the local government entity that certified the vital local government, public health, education or safety need of the UST(s) must report, on a form provided by the agency, the status of contracts and services.

(8) Quarterly, a private owner or operator that receives a grant must submit a report, on a form provided by the agency, of petroleum business volume and what local government contracts are currently in effect.

(9) Annually, a rural hospital that has received a grant will report to the agency the amount of charity care provided and the dollar value of that care.

(10) At the conclusion of the fifteen-year agreement, the agency will sign a release of any claim on the real property named in the original contract between the grantee and the agency. The responsibility for removing the lien will rest with the current property owner of record.

(11) At least annually, a representative of the agency will visit the UST site of each grantee to verify adherence to contractual obligations.

[Statutory Authority: Chapter 70.148 RCW. 91-24-048, § 374-60-120, filed 11/27/91, effective 12/28/91.]