

WAC 365-210-040 Training program. The training program shall include, but not be limited to, the following topics: Relevant federal, state and local laws and standards; supports; footings; anchors; site preparation; placement; closing in; plumbing; electrical; combustion appliances; skirting; interior and exterior finishing; operational checks and adjustments; auxiliary structures; and alterations. The department shall provide a training manual to each applicant as part of the training program, the contents of which shall include, but not be limited to, the above topics. The department shall be responsible for updating the training program to reflect changes in relevant federal, state and local codes and standards. The department shall, at a minimum, conduct the training program quarterly.

[Statutory Authority: Chapter 43.63B RCW. 95-14-121, § 365-210-040, filed 6/30/95, effective 7/1/95.]

WAC 365-210-050 Examination—Failure—Retaking. The examination shall only include topics covered in the training program. In order to pass the examination, applicants must answer 70% of the questions correctly. An applicant who fails the examination shall be permitted to retake the training course and/or the examination as often as is necessary to secure a passing rate of 70%.

[Statutory Authority: Chapter 43.63B RCW. 95-14-121, § 365-210-050, filed 6/30/95, effective 7/1/95.]

WAC 365-210-060 Fees. (1) First time applicants must attend the training course and take the examination. Persons failing the exam on the first try may retake it one time at no cost, but must pay \$50 for each subsequent attempt. Certificate holders seeking to renew need only pay for and pass the most recent examination. For a timely renewal, certificate holders must have passed the examination prior to the expiration of their current certificates. Certificate holders seeking to renew may, at their option, attend the training course and/or purchase a copy of the most recent training manual.

(2) The fee for the training program, including the cost of one copy of the training manual, shall be \$100.00. The cost for the examination and certification shall be \$100.00. The fee for renewal of the certificate after three years, including retaking the examination, shall be \$100.

(3) An applicant whose application is found to be ineligible or inadequate shall be entitled to a full refund, and shall be notified by the department of such ineligibility or inadequacy at least 20 days prior to the examination. If a late application is received and found to be inadequate, the department shall make its best effort to notify the applicant prior to the examination.

(4) An applicant who fails the examination shall not be entitled to a refund.

(5) Individuals will be allowed to audit the training program and not take the examination. The audit fee shall be \$100.00.

(6) The department shall make extra copies of the training manual available on request for a fee designed to cover costs.

(7) Fees due at the time of certification must be paid in full in order for the department to issue the certificate.

[Statutory Authority: Chapter 43.63B RCW. 95-14-121, § 365-210-060, filed 6/30/95, effective 7/1/95.]

WAC 365-210-070 Failure of examination—Brief adjudicative proceeding. Persons failing the examination may seek agency review as a brief adjudicative proceeding under RCW 34.05.482 through 34.05.494.

[Statutory Authority: Chapter 43.63B RCW. 95-14-121, § 365-210-070, filed 6/30/95, effective 7/1/95.]

WAC 365-210-080 Notification to employer. Where applicable, the department shall send notice to the certificate holder's employer regarding revocation of an installer certification.

[Statutory Authority: Chapter 43.63B RCW. 95-14-121, § 365-210-080, filed 6/30/95, effective 7/1/95.]

Title 374 WAC POLLUTION LIABILITY INSURANCE AGENCY

Chapters

- 374-50 Insurance eligibility assessment reimbursement.**
- 374-70 Heating oil pollution liability insurance program.**

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.
374-50-035	Insurance eligibility assessment.
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 costs associated with determining whether an applicant for pollution liability insurance under the pollution liability insurance program meets the underwriting standards of the insurer and the agency.

[Statutory Authority: RCW 70.148.040. 95-11-042 (Order 95-02), § 374-50-010, filed 5/10/95, effective 6/10/95; 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 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 and/or ground water sampling, and other physical or chemical tests.

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

(6) "Owner" means a person who owns a regulated petroleum 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) "Pollution liability insurance program" means the reinsurance program administered by the pollution liability insurance agency.

(9) "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 regulated petroleum storage tanks.

[Statutory Authority: RCW 70.148.040. 95-11-042 (Order 95-02), § 374-50-020, filed 5/10/95, effective 6/10/95; 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 owner or operator that is required to demonstrate financial responsibility for one or more regulated petroleum 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 that satisfies the criteria set forth in WAC 374-50-040 may apply for assistance in assisting with the 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; and

(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.

[Statutory Authority: RCW 70.148.040. 95-11-042 (Order 95-02), § 374-50-030, filed 5/10/95, effective 6/10/95; 92-09-091 (Order 92-02), § 374-50-030, filed 4/17/92, effective 5/18/92.]

WAC 374-50-035 Insurance eligibility assessment.

(1) Insurers may establish eligibility assessment underwriting requirements to determine the eligibility of certain regulated petroleum storage tanks for coverage under their pollution liability insurance policies. To limit the threat to human health and the environment, and to determine the risk associated with insurance coverage of certain regulated petroleum storage tanks, such eligibility assessment requirements are established. Eligibility assessment requirements may include: Inventory records evaluation, statistical inventory reconciliation, tank tightness testing, line tightness testing, soil and/or ground water sampling.

(2) Insurance eligibility assessment requirements may be established by each insurer with which the agency has a reinsurance contract, independent of other insurers. Requirements may not necessarily be the same for each insurer under the pollution liability insurance program.

(3) Insurance eligibility assessment requirements may be in addition to leak detection requirements established by the United States Environmental Protection Agency, department of ecology or local government authorities.

(4) The agency may establish insurance eligibility assessment requirements to determine the eligibility of regulated petroleum storage tanks under the pollution liability insurance program. Such requirements are established to limit the threat to human health and the environment and to determine the risk associated with insurance coverage of those tanks.

(5) If soil samples are required as an insurance eligibility assessment measure and if reimbursement is requested in accordance with WAC 374-50-050, soil sampling and analysis must be conducted in accordance with the current protocol published by the agency. The protocol is not a part of this rule, but is available from the agency.

(a) Soil samples are required only at the time of binding coverage and inception of the policy. If coverage of such a site has been bound prior to the effective date of this rule, soil samples must be taken prior to renewal of the policy.

(b) A specific protocol for soil sampling and analysis published by the agency is not a part of this rule.

[Statutory Authority: RCW 70.148.040. 95-11-042 (Order 95-02), § 374-50-035, filed 5/10/95, effective 6/10/95.]

WAC 374-50-040 Eligibility criteria. (1) Owners or operators 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 regulated petroleum 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 purchases 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 (3) of this section.

(2) Owners or operators of regulated petroleum storage tanks required to provide soil samples are not required to satisfy the net worth requirement of subsection (1)(h) of this section.

(3) 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 regulated petroleum 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, 95-11-042 (Order 95-02), § 374-50-040, filed 5/10/95, effective 6/10/95; 92-09-091 (Order 92-02), § 374-50-040, filed 4/17/92, effective 5/18/92.]

WAC 374-50-050 Reimbursement limits. (1) Approved owners or operators will be reimbursed for insurance eligibility assessment costs established by this chapter according to the following schedule:

(a) For costs incurred by owners or operators 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 by owners or operators 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 by owners or operators 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(3) — 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) Ground water sampling — three hundred fifty dollars per sample.

(3) Soil sampling — one hundred percent of the cost to a maximum amount of two thousand five hundred dollars per site.

(4) It is the intent of the reimbursement program established by this chapter to assist as many owners or operators of regulated petroleum 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 owner or operator, regardless of the number of sites and regulated petroleum storage tanks owned or operated, whether directly or indirectly. This restriction, however, does not apply to soil sampling.

(5) Reimbursement will be made to the person or firm performing the insurance eligibility assessment services.

[Statutory Authority: RCW 70.148.040, 95-11-042 (Order 95-02), § 374-50-050, filed 5/10/95, effective 6/10/95; 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 expire December 31, 1996.

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

[Statutory Authority: RCW 70.148.040, 95-11-042 (Order 95-02), § 374-50-060, filed 5/10/95, effective 6/10/95; 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 and a reimbursement agreement.

(3) Applicants for soil sampling are only required to submit a general information application form and a reimbursement agreement provided by the agency.

(4) 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 additional information required by the agency.

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

(6) An applicant whose application has been disapproved 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, 95-11-042 (Order 95-02), § 374-50-070, filed 5/10/95, effective 6/10/95; 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 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 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;

(b) For soil sampling, a copy of the field notes which include the name and address of the site; a sketch indicating boring locations; depth of each boring; ground water level encountered; type of instrument used for sample analysis and instrument calibration; ambient weather conditions; soil classification along the depth of each boring; depth of soil/water interface; results of screening of cuttings that exceed background levels; or any visual observations that indicate the presence of petroleum; readings from headspace analysis and confirmatory lab analysis results.

(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) Owners or operators on whose behalf reimbursement under the program created by this chapter has been made are required to maintain pollution liability insurance coverage in force for at least one year. If insurance coverage is not maintained for this period, the owner or operator 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) Owners or operators who have applied for insurance in good faith, but whose tanks, or sites fail to satisfy the insurer's underwriting requirements and are therefore denied

coverage will not be required to return reimbursement payments.

[Statutory Authority: RCW 70.148.040, 95-11-042 (Order 95-02), § 374-50-080, filed 5/10/95, effective 6/10/95; 92-09-091 (Order 92-02), § 374-50-080, filed 4/17/92, effective 5/18/92.]

WAC 374-50-090 Other restrictions. (1) Owners or operators 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 UST supervisors and UST site assessors certified by the International Fire Code Institute.

[Statutory Authority: RCW 70.148.040, 95-11-042 (Order 95-02), § 374-50-090, filed 5/10/95, effective 6/10/95; 92-09-091 (Order 92-02), § 374-50-090, filed 4/17/92, effective 5/18/92.]

Chapter 374-70 WAC HEATING OIL POLLUTION LIABILITY INSURANCE PROGRAM

WAC

374-70-010	Purpose and authority.
374-70-020	Definitions.
374-70-030	Responsibility.
374-70-040	Insurance program.
374-70-050	Eligibility.
374-70-060	Coverage.
374-70-070	Parties involved with an accidental release and corrective action.
374-70-080	Claims procedures.
374-70-090	Third-party claims procedures.
374-70-100	Service provider requirements and procedures.
374-70-110	Quality assurance.
374-70-120	Appeals.
374-70-130	Confidentiality of information.

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

(2) The pollution liability insurance agency is directed by chapter 70.149 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of active heating oil tanks.

[Statutory Authority: Chapter 70.149 RCW, 96-01-101, § 374-70-010, filed 12/19/95, effective 1/19/96.]

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

(1) "Abandoned heating oil tank" means a heating oil tank system that has been abandoned or decommissioned and is no longer active and in use.

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

(3) "Active" heating oil tank means a heating oil tank that:

(a) Is in use at the time of registration for the heating oil pollution liability insurance program;

(b) Has been in continuous use for a period of eighteen months prior to registration; and

(c) Has been continuously in use between registration and submission of a notice of claim.

(4) "Agency" means the Washington state pollution liability insurance agency established pursuant to chapter 70.148 RCW. For purposes of chapter 70.149 RCW, agency shall also mean staff or employees of the pollution liability insurance agency.

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

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

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

(b) "Corrective action" does not include:

(i) Replacement or repair of heating oil tanks or other receptacles; or

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

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

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

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

used solely for industrial process heating purposes or generation of electrical energy.

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

(12) "MTCA" means the Model Toxics Control Act (chapter 70.105D RCW).

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

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

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

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

(17) "Per occurrence, per site, per year" means one accidental release per site, per year.

(18) "Pollution liability insurance agency" (PLIA) means the Washington state pollution liability insurance agency established pursuant to chapter 70.148 RCW. For purposes of chapter 70.149 RCW, pollution liability insurance agency shall also mean staff or employees of the pollution liability insurance agency.

(19) "Pollution liability insurance agency trust account" means the pollution liability insurance agency trust account established under chapter 70.148 RCW and established in the custody of the state treasurer. Expenditures from the account are used for the purposes of chapter 70.148 RCW including the payment of costs of administering the pollution liability insurance program, and payment of reinsurance claims.

(20) "Property damage" means:

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

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

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

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

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

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

[Statutory Authority: Chapter 70.149 RCW. 96-01-101, § 374-70-020, filed 12/19/95, effective 1/19/96.]

WAC 374-70-030 Responsibility. (1) The director of the pollution liability insurance agency is directed by chapter 70.149 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of active heating oil tanks. The agency implements and administers the pollution liability insurance program established by chapter 70.148 RCW and the heating oil pollution liability insurance program established by chapter 70.149 RCW.

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

Pollution Liability Insurance Agency
State of Washington
1015 10th Avenue, S.E.
P.O. Box 40930
Olympia, WA 98504-0930

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

[Statutory Authority: Chapter 70.149 RCW. 96-01-101, § 374-70-030, filed 12/19/95, effective 1/19/96.]

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

[Statutory Authority: Chapter 70.149 RCW. 96-01-101, § 374-70-040, filed 12/19/95, effective 1/19/96.]

WAC 374-70-050 Eligibility. Owners and operators of active heating oil tanks in the state of Washington are eligible for coverage under the heating oil pollution liability insurance program.

(1) Participation in the heating oil pollution liability insurance program is optional for heating oil tank owners. If a heating oil tank owner wishes to participate in the heating oil pollution liability insurance program, the heating oil tank owner must register the active heating oil tank by submitting to PLIA a completed registration form to be provided by PLIA. Heating oil tank owners choosing to participate in the heating oil pollution liability insurance program established by this chapter must comply with the following criteria:

(a) The owner must submit proof, by one or more of the following methods, that the heating oil tank is active at the time of registration with the agency (PLIA) and that the heating oil tank has remained active eighteen months prior to registration:

(i) The owner must submit to PLIA a statement from a heating oil supplier attesting to deliveries of heating oil to the heating oil tank for eighteen months prior to registration; and/or

(ii) The owner must submit to PLIA a copy of invoices, or canceled checks, for receipt of heating oil at the heating oil tank reflecting purchases or deliveries for eighteen months prior to registration;

(b) Abandoned or decommissioned heating oil tank systems are not eligible for coverage under the heating oil pollution liability insurance program;

(c) At the discretion of the director, the following circumstances dictate individual consideration for eligibility for coverage under the heating oil pollution liability insurance program:

(i) If a heating oil tank has been recently installed (new construction) or reactivated (conversion to oil heat); or

(ii) If a heating oil tank has not been active for eighteen months prior to registration due to unusual or extenuating circumstances;

(d) In the event of a property transfer, heating oil pollution liability insurance coverage of a registered heating oil tank ceases. The new owner must submit a new registration form if the owner wishes to participate in the heating oil pollution liability insurance program. If the new owner does not submit a new registration form, the active heating oil tank will not be covered under the heating oil pollution liability insurance program; and

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

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

(3) Owners and operators of active heating oil tanks, or sites containing active heating oil tanks where an accidental release has been identified or where the owner or operator knows of an accidental release prior to heating oil tank registration are eligible for coverage under the heating oil pollution liability insurance program subject to the following conditions:

(a) The owner or operator must have a plan for proceeding with corrective action; and

(b) If the owner or operator files a claim with PLIA, the owner or operator has the burden of proving, to the satisfaction of the director, that the claim is not related to an accidental release occurring prior to the heating oil tank registration.

[Statutory Authority: Chapter 70.149 RCW. 96-01-101, § 374-70-050, filed 12/19/95, effective 1/19/96.]

WAC 374-70-060 Coverage. (1) The effective date of coverage under the heating oil pollution liability insurance program is January 1, 1996. Thereafter, individual heating oil tank coverage shall become effective upon receipt, by PLIA, of the completed registration form.

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

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

- (a) Corrective action if the accidental release occurs after the registration of an active heating oil tank;
- (b) Actions necessary to determine the extent and severity of an accidental release;
- (c) Costs, not to exceed sixty thousand dollars per occurrence, per site, per year;
- (d) Costs in excess of other valid insurance or warranties;
- (e) First-party property damage restoration, including landscaping, limited to one thousand five hundred dollars per occurrence, per site, per year;
- (f) Third-party property damage restoration, including landscaping, limited to one thousand five hundred dollars for each third-party claimant per occurrence, per site, per year;
- (g) Excavation, treatment and/or removal and proper disposal of any soil or water contaminated by the accidental release and removal and proper disposal of nonrepairable heating oil tank or tanks; and
- (h) Required soil and water sampling and testing to determine if corrective action standards have been met.

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

- (a) Corrective action if the accidental release occurred prior to the registration of an active heating oil tank;
- (b) Costs covered by other valid insurance or warranties;
- (c) Costs in excess of sixty thousand dollars per occurrence, per site, per year, exclusive of other valid insurance or warranties;
- (d) Cleanup of contamination from other sources;
- (e) Repair or replacement of the heating oil tank, lines, or furnace;
- (f) Emergency heat restoration procedures;
- (g) Cleanup of a site beyond the MTCA cleanup levels;
- (h) Corrective action associated with an abandoned or decommissioned heating oil tank or site;
- (i) First-party property damage restoration, including landscaping, in excess of one thousand five hundred dollars per occurrence, per site, per year;
- (j) Third-party property damage restoration, including landscaping, in excess of one thousand five hundred dollars for each third-party claimant per occurrence, per site, per year; and
- (k) Defense costs, including the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:
 - (i) The United States, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or
 - (ii) A third party for bodily injury or property damage caused by an accidental release.
- (5) If a claim exceeds sixty thousand dollars in total damages, coverage within the sixty thousand dollar policy limit shall be on a pro rata basis between the insured heating oil tank owner and third-party claimant(s).

[Statutory Authority: Chapter 70.149 RCW. 96-01-101, § 374-70-060, filed 12/19/95, effective 1/19/96.]

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

(1) Heating oil tank owner or operator. All liabilities caused by an accidental release originating from a heating oil tank are the sole responsibility of the heating oil tank owner. **The pollution liability insurance agency and/or the state of Washington accepts no liability, nor portion of the liability, from the heating oil tank owner.** The heating oil tank operator may submit forms to PLIA on behalf of the owner, however, no corrective action may be performed without the specific written consent of the heating oil tank owner. The heating oil tank owner or operator is responsible for selecting a heating oil tank service provider from the prequalified list supplied by PLIA, working with that service provider to file the appropriate forms and reports with PLIA, and for approving the completed corrective action.

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

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

(4) PLIA. PLIA registers heating oil tanks, purchases insurance and provides reinsurance, provides a list of prequalified heating oil tank service providers, manages claims, investigates sites and provides certification that a claim is closed.

(5) Third-party administrator. PLIA will appoint a third-party administrator to perform all initial investigations and site assessments. Investigation will include, but not necessarily be limited to, verification that the accidental release is from an active, registered heating oil tank, investigation of the existence of any other valid insurance or warranties providing coverage for the heating oil tank and/or property, and determination of the extent and severity of the accidental release. The heating oil tank owner or operator shall cooperate fully with the third-party administrator and supply any information necessary for the third-party administrator to complete the initial investigation and site assessment, including, but not limited to, a copy of any homeowner, pollution liability, or environmental impairment insurance policy(ies). A report of the investigation will be submitted to PLIA. If no contamination requiring corrective action is discovered during the investigation, all costs associated with the investigation will be the responsibility of the heating oil tank owner.

(6) Department of ecology. The department of ecology administers state-wide laws and rules detailing MTCA cleanup standards for both soil and ground water. To be

eligible for coverage under the heating oil pollution liability insurance program, corrective action must satisfy MTCA and pertinent local government requirements.

(7) Heating oil tank service provider. A heating oil tank service provider is an independent contractor responsible for all aspects of corrective action including excavation, tank/line removal, sampling and testing, remedial actions, site restoration, and submittal of required reports to PLIA.

[Statutory Authority: Chapter 70.149 RCW. 96-01-101, § 374-70-070, filed 12/19/95, effective 1/19/96.]

WAC 374-70-080 Claims procedures. To receive payment from the heating oil pollution liability insurance program for covered corrective action costs, the following actions are required:

(1) The claim must be for corrective action resulting from an accidental release from an active heating oil tank which has been registered with PLIA prior to the accidental release;

(2) The claim must satisfy all requirements and restrictions established by chapter 70.149 RCW and this chapter. Any failure to satisfy all requirements and restrictions may be a basis for denial of claim;

(3) The heating oil tank owner or operator must provide notice to PLIA that a potential claim exists within seven days of discovery that an accidental release may have occurred;

(4) Upon receipt of notice of a potential claim, PLIA will commence completion of the notice of claim, and will provide the heating oil tank owner or operator with a list of prequalified heating oil tank service providers;

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

(6) Initial investigation and site assessment will be performed by a third-party administrator appointed by PLIA. Investigation will include, but not necessarily be limited to, verification that the accidental release is from an active, registered heating oil tank, investigation of the existence of any other valid insurance or warranties providing coverage for the heating oil tank and/or property, and determination of the extent and severity of the accidental release. The heating oil tank owner or operator shall cooperate fully with the third-party administrator and supply any information necessary for the third-party administrator to complete the initial investigation and site assessment, including, but not limited to, a copy of any homeowner, pollution liability, or environmental impairment insurance policy(ies). A report of the investigation will be submitted to PLIA. If no contamination requiring corrective action is discovered during the investigation, all costs associated with the investigation will be the responsibility of the heating oil tank owner;

(7) If the claim is determined by PLIA to be valid, the heating oil tank owner or operator will be notified by PLIA to select a heating oil tank service provider, from the list of prequalified heating oil tank service providers, to perform corrective action. PLIA's list of prequalified heating oil tank service providers will be updated quarterly. The heating oil tank owner or operator must contact PLIA, prior to selecting a heating oil tank service provider, to confirm that the

heating oil tank service provider is still included on the agency's list of prequalified heating oil tank service providers;

(8) The prequalified heating oil tank service provider will notify PLIA of selection by the heating oil tank owner or operator. PLIA will then forward to the heating oil tank service provider the following forms:

(a) Scope of work proposal. This form will provide the heating oil tank owner or operator and PLIA a proposal of the extent and elements of corrective action, as well as a specific cost proposal;

(b) Change order. This form provides a proposal for change or deviation from the scope of work proposal;

(c) Project field report. This form provides a record of all corrective action and work elements, as well as a record of detailed costs. The project field report must include color photographs of the project at commencement, completion, and any significant steps in between, as well as appropriate project sketches and/or plans; and

(d) Claim report. This form will include a project closeout report, final cleanup report, and corrective action cost claim;

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

(10) Upon receipt of approval by the heating oil tank owner or operator and PLIA of the scope of work proposal, the heating oil tank service provider may commence work to accomplish corrective action in compliance with MTCA independent remedial action;

(11) All work performed by the heating oil tank service provider on behalf of the heating oil tank owner or operator and PLIA must be within the terms of the contract and the approved scope of work proposal and shall not exceed costs included in the scope of work proposal. Any change(s) or deviation(s) from the approved scope of work proposal must be accomplished through a change order request which must be approved in advance by the heating oil tank owner or operator and PLIA. Any work performed by the heating oil tank service provider that has not been approved, prior to performance, by the heating oil tank owner or operator and PLIA, or is beyond the terms of the scope of work proposal or change order(s), or is in excess of costs approved in the scope of work proposal or change order(s), will not be paid or reimbursed under the heating oil pollution liability insurance program. Such work or excess costs will be the responsibility of the heating oil tank owner and/or heating oil tank service provider;

(12) Corrective action activities and costs must be recorded by the heating oil tank service provider on the project field report form provided by PLIA. The project field report must include color photographs of the project at commencement, completion and any significant steps between, as well as appropriate project sketches and/or plans;

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

(14) Upon completion of all corrective action and approval by the heating oil tank owner or operator, the

heating oil tank service provider must submit to PLIA a complete claim report. The claim report will include the project closeout report, project field report, final cleanup report and corrective action cost claim. After review and approval of the claim report by PLIA, the heating oil tank service provider will receive payment;

(15) Upon completion of corrective action that appears to satisfy the requirements of all applicable state and local statutes, the director will certify that the claim has been closed;

(16) Approval of claims and payment of covered costs are contingent upon the availability of revenue. The director reserves the right to defer payment at any time that claim demands exceed the revenue available for the heating oil pollution liability insurance program. Payment will commence with sufficient revenue;

(17) PLIA will maintain all records associated with a claim for a period of ten years; and

(18) In the case of an emergency, the director may authorize deviation from this procedure to the extent necessary to adequately respond to the emergency.

[Statutory Authority: Chapter 70.149 RCW. 96-01-101, § 374-70-080, filed 12/19/95, effective 1/19/96.]

WAC 374-70-090 Third-party claims procedures.

For a third party to receive payment from the heating oil pollution liability insurance program for covered corrective action costs, the following actions are required:

(1) The claim must be for corrective action resulting from a leak or spill from an active heating oil tank which has been registered with PLIA prior to the leak or spill;

(2) The claim must satisfy all requirements and restrictions established for third-party claims by chapter 70.149 RCW and this chapter. Any failure to satisfy all requirements and restrictions may be a basis for denial of claim;

(3) The third-party claimant must provide notice to PLIA that a potential third-party claim may exist within ten days of discovery that damage may have occurred from a leak or spill from a named insured's active heating oil tank;

(4) Upon receipt of notice of a potential claim, PLIA will commence completion of the notice of claim;

(5) Initial investigation and site assessment will be performed by a third-party administrator appointed by PLIA. Investigation will include, but not necessarily be limited to, verification that the leak or spill is from an active, registered heating oil tank, investigation of the existence of any other valid insurance or warranties providing coverage for the heating oil tank and/or property, and determination of the extent and severity of the leak or spill. The third-party claimant shall cooperate fully with the third-party administrator and supply any information necessary for the third-party administrator to complete the initial investigation and site assessment. A report of the investigation will be submitted to PLIA. If no contamination requiring corrective action is discovered during the investigation, all costs associated with the investigation will be the responsibility of the heating oil tank owner;

(6) If the claim is determined by PLIA to be valid, the third-party claimant will be notified by PLIA to select a heating oil tank service provider, from the list of prequalified heating oil tank service providers, to perform corrective

action. PLIA's list of prequalified heating oil tank service providers will be updated quarterly. The third-party claimant must contact PLIA, prior to selecting a heating oil tank service provider, to confirm that the heating oil tank service provider is still included on the agency's list of prequalified heating oil tank service providers;

(7) The prequalified heating oil tank service provider will notify PLIA of selection by the third-party claimant. PLIA will then forward to the heating oil tank service provider the following forms:

(a) Scope of work proposal. This form will provide the third-party claimant and PLIA a proposal of the extent and elements of corrective action, as well as a specific cost proposal;

(b) Change order. This form provides a proposal for change or deviation from the scope of work proposal;

(c) Project field report. This form provides a record of all corrective action and work elements, as well as a record of detailed costs. The project field report must include color photographs of the project at commencement, completion, and any significant steps in between, as well as appropriate project sketches and/or plans; and

(d) Claim report. This form will include a project closeout report, final cleanup report, and corrective action cost claim;

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

(9) Upon receipt of approval by the third-party claimant and PLIA of the scope of work proposal, the heating oil tank service provider may commence work to accomplish corrective action in compliance with MTCA independent remedial action;

(10) All work performed by the heating oil tank service provider on behalf of the third-party claimant and PLIA must be within the terms of the contract and the approved scope of work proposal and shall not exceed costs included in the scope of work proposal. Any change(s) or deviation(s) from the approved scope of work proposal must be accomplished through a change order request which must be approved in advance by the third-party claimant and PLIA. Any work performed by the heating oil tank service provider that has not been approved, prior to performance, by the third-party claimant and PLIA, or is beyond the terms of the scope of work proposal or change order(s), or is in excess of costs approved in the scope of work proposal or change order(s), will not be paid or reimbursed under the heating oil pollution liability insurance program. Such work or excess costs will be the responsibility of the third-party claimant and/or heating oil tank service provider;

(11) Corrective action activities and costs must be recorded by the heating oil tank service provider on the project field report form provided by PLIA. The project field report must include color photographs of the project at commencement, completion and any significant steps between, as well as appropriate project sketches and/or plans;

(12) Upon completion of all corrective action, the third-party claimant must sign the project closeout report indicating approval of and satisfaction with all work performed by the heating oil tank service provider;

(13) Upon completion of all corrective action and approval by the third-party claimant, the heating oil tank

service provider must submit to PLIA a complete claim report. The claim report will include the project closeout report, project field report, final cleanup report and corrective action cost claim. After review and approval of the claim report by PLIA, the heating oil tank service provider will receive payment;

(14) Upon completion of corrective action that appears to satisfy the requirements of all applicable state and local statutes, the director will certify that the claim has been closed;

(15) Approval of claims and payment of covered costs are contingent upon the availability of revenue. The director reserves the right to defer payment at any time that claim demands exceed the revenue available for the heating oil pollution liability insurance program. Payment will commence with sufficient revenue;

(16) PLIA will maintain all records associated with a claim for a period of ten years; and

(17) In the case of an emergency, the director may authorize deviation from this procedure to the extent necessary to adequately respond to the emergency.

[Statutory Authority: Chapter 70.149 RCW. 96-01-101, § 374-70-090, filed 12/19/95, effective 1/19/96.]

WAC 374-70-100 Service provider requirements and procedures. (1) All corrective action shall be performed by prequalified heating oil tank service providers. A heating oil tank service provider is an independent contractor responsible for all aspects of corrective action including excavation, tank/line removal, sampling and testing, remedial actions, site restoration, and submittal of required reports to PLIA. PLIA will maintain a list of prequalified heating oil tank service providers. This list will be made available to heating oil tank owners and operators. PLIA will continually monitor the performance of the prequalified heating oil tank service providers.

(2) To qualify as a prequalified heating oil tank service provider, a contractor must submit to PLIA the following documents:

(a) Certificates of insurance covering general liability, vehicles, and workers' compensation, including limits of coverage;

(b) Copy of state general contractor's license; and

(c) A signed agreement to terms and conditions, established by PLIA, for prequalified heating oil tank service providers.

(3) Once retained, the heating oil tank service provider works with PLIA, the heating oil tank owner or operator and/or the third-party claimant to perform the following:

(a) Perform the corrective action;

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

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

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

(5) All corrective action activities must meet the criteria established by MTCA and any pertinent local ordinances or requirements.

[Statutory Authority: Chapter 70.149 RCW. 96-01-101, § 374-70-100, filed 12/19/95, effective 1/19/96.]

WAC 374-70-110 Quality assurance. (1) PLIA shall maintain a detailed record of any quality assurance issues. Whenever the agency documents a violation of the agency's standards and procedures, the agency shall notify the heating oil tank service provider and explain the agency's procedures as set forth in this section.

(2)(a) After the agency has documented one violation of the agency's standards and procedures, the agency shall prepare a written summary of events;

(b) The director shall inform the affected heating oil tank service provider in writing of the violation. The heating oil tank service provider may respond in writing to the violation or change its practice within twenty days.

(3) If the heating oil tank service provider does not change its practice or respond in writing within twenty days, the agency may delete the heating oil tank service provider from the agency's list of prequalified heating oil tank service providers, and the heating oil tank service provider will not be eligible for payments, either directly or indirectly of corrective action costs.

[Statutory Authority: Chapter 70.149 RCW. 96-01-101, § 374-70-110, filed 12/19/95, effective 1/19/96.]

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

(a) A denial of eligibility for coverage;

(b) Amount of payment allowed for corrective action;

(c) Amount of payment allowed for property damage;

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

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

(f) A denial of inclusion on the agency's list of prequalified heating oil tank service providers; and

(g) Removal of a heating oil tank service provider from the agency's list of prequalified heating oil tank service providers.

(2) A person has forty-five days after the decision to file a written request for a hearing.

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

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

[Statutory Authority: Chapter 70.149 RCW. 96-01-101, § 374-70-120, filed 12/19/95, effective 1/19/96.]

WAC 374-70-130 Confidentiality of information. (1) All information obtained during heating oil tank registration shall be confidential and may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, government body, or other entity.

(2) All examination and proprietary reports and information obtained in soliciting bids from insurers and in monitoring the selected insurer shall be confidential and may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, government body, or other entity.

[Statutory Authority: Chapter 70.149 RCW. 96-01-101, § 374-70-130, filed 12/19/95, effective 1/19/96.]