

[Statutory Authority: RCW 43.21B.170 and SHB 1314. 97-19-064, § 371-08-555, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 43.21B.170. 96-15-003, § 371-08-555, filed 7/3/96, effective 8/3/96.]

Title 374 WAC POLLUTION LIABILITY INSURANCE AGENCY

Chapters

- 374-50 Insurance eligibility assessment reimbursement.**
374-70 Heating oil pollution liability insurance program.
374-80 Heating oil tanks.

Chapter 374-50 WAC INSURANCE ELIGIBILITY ASSESSMENT REIMBURSEMENT

WAC

374-50-010 through 374-50-090 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 374-50-010 Authority and purpose. [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.] Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.
- 374-50-020 Definitions. [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.] Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.
- 374-50-030 Eligibility for reimbursement program—Who may apply. [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.] Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.
- 374-50-035 Insurance eligibility assessment. [Statutory Authority: RCW 70.148.040. 95-11-042 (Order 95-02), § 374-50-035, filed 5/10/95, effective 6/10/95.] Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.
- 374-50-040 Eligibility criteria. [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.] Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.
- 374-50-050 Reimbursement limits. [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.] Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.
- 374-50-060 Program schedule. [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.] Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.
- 374-50-070 Application procedure. [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.] Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.
- 374-50-080 Payment of reimbursement. [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.] Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.
- 374-50-090 Other restrictions. [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.] Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.

WAC 374-50-010 through 374-50-090 Repealed.
See Disposition Table at beginning of this chapter.

Chapter 374-70 WAC

HEATING OIL POLLUTION LIABILITY INSURANCE PROGRAM

WAC

- 374-70-020 Definitions.
 374-70-030 Responsibility.
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 374-70-070 Parties involved with an accidental release and corrective action.
 374-70-080 Claims.
 374-70-090 Third-party claims.
 374-70-100 Service provider requirements and procedures.
 374-70-110 Repealed.
 374-70-120 Appeals.
 374-70-130 Confidentiality of information.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 374-70-110 Quality assurance. [Statutory Authority: Chapter 70.149 RCW. 96-01-101, § 374-70-110, filed 12/19/95, effective 1/19/96.] Repealed by 97-06-080, filed 3/3/97, effective 4/3/97. Statutory Authority: Chapter 70.149 RCW.

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) Removal, replacement or repair of heating oil tanks or other receptacles;

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

(iii) Costs directly associated with tank removal.

(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 corrective action including sampling and testing, remedial actions, site restoration, and submittal of required reports to PLIA.

(12) "Insurer" means the commercial insurance company providing pollution liability insurance to registered owners of heating oil tanks under the heating oil pollution liability insurance program. PLIA is the reinsurer of the commercial insurance company and acts as the designated representative of the insurer for the heating oil pollution liability insurance program.

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

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

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

(16) "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.

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

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

(19) "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.

(20) "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.

(21) "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.

(22) "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.

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

(24) "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.

(25) "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. 97-06-080, § 374-70-020, filed 3/3/97, effective 4/3/97; 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.

(4) In administering the heating oil pollution liability insurance program, PLIA acts as the designated representative of the insurer providing pollution liability insurance to registered owners of heating oil tanks.

[Statutory Authority: Chapter 70.149 RCW. 97-06-080, § 374-70-030, filed 3/3/97, effective 4/3/97; 96-01-101, § 374-70-030, 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. Corrective action for an accidental release occurring prior to the effective date of coverage will not be covered under the program.

(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 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) Removal, 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).

(6) A claim will be accepted for coverage only after an investigation has confirmed the existence of an accidental release which is eligible for coverage under these rules.

[Statutory Authority: Chapter 70.149 RCW. 97-06-080, § 374-70-060, filed 3/3/97, effective 4/3/97; 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 notifying the heating oil supplier in the case of a suspected accidental release and investigating the source and extent of the suspected accidental release. The heating oil tank owner

is responsible for notification of homeowner's insurer and determination of whether coverage will be provided. If corrective action is implemented, the heating oil tank owner is responsible for selecting a service provider approved by the insurer and 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 acts as the designated representative of the insurer for purposes of the heating oil pollution liability insurance program. PLIA provides informal advice and assistance to heating oil tank owners and operators, registers heating oil tanks for insurance coverage, provides listings of service providers approved by the insurer, manages claims for the insurer and provides certification that a claim is closed.

(5) Third-party administrator. PLIA may appoint a third-party administrator to assist in monitoring, investigation and corrective action.

(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 who contracts with an owner or operator to perform corrective action, including submitting reports to PLIA on behalf of the owner or operator.

[Statutory Authority: Chapter 70.149 RCW, 97-06-080, § 374-70-070, filed 3/3/97, effective 4/3/97; 96-01-101, § 374-70-070, filed 12/19/95, effective 1/19/96.]

WAC 374-70-080 Claims. Coverage under the heating oil pollution liability insurance program shall be in excess of other valid insurance and warranties. Payment of a claim will be made only if the cleanup of contamination resulting from an accidental release is not covered by other valid insurance and warranties. Corrective action will be accomplished by the most cost-effective method available. 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 ten 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 insurer approved 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) The heating oil tank owner is responsible for investigation to determine the source and extent of a suspected accidental release. The heating oil tank owner is also responsible for notification of the homeowner's insurer and determination of whether coverage will be provided;

(7) If the claim is determined by PLIA to be valid, PLIA will so notify the heating oil tank owner or operator. The corrective action shall be performed by a heating oil tank service provider approved by the insurer;

(8) The 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 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;

(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;

(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 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;

(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, 97-06-080, § 374-70-080, filed 3/3/97, effective 4/3/97; 96-01-101, § 374-70-080, filed 12/19/95, effective 1/19/96.]

WAC 374-70-090 Third-party claims. Coverage under the heating oil pollution liability insurance program shall be in excess of other valid insurance and warranties. Payment of a claim will be made only if the cleanup of contamination resulting from an accidental release is not covered by other valid insurance and warranties. Corrective action will be accomplished by the most cost-effective method available. 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 fifteen 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) If an accidental release from a named insured's heating oil tank has been confirmed, PLIA, as designated representative of the insurer will initiate an investigation to determine the extent and source of the contamination. Investigation will be performed by PLIA or a designated representative approved by the insurer. PLIA may also assist the named insured heating oil tank owner in determining if the insured's homeowner's insurance provides coverage for third-party damage. The third-party claimant shall cooperate fully with the investigator and provide any information or access necessary to complete the investigation;

(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, approved by the insurer, to perform corrective action;

(7) The 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 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;

(10) All work performed by the heating oil tank service provider on behalf of the third-party claimant and the insurer 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;

(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 corrective action and approval by the third-party claimant, the heating oil tank service provider must submit to PLIA a complete claim report. 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. 97-06-080, § 374-70-090, filed 3/3/97, effective 4/3/97; 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 insurer approved heating oil tank service providers. A heating oil tank service provider is an independent contractor responsible for corrective action including excavation, sampling and testing, remedial actions, site restoration, and submittal of required reports to PLIA.

(2) Once retained, the heating oil tank service provider works with the insurer, PLIA, as the insurer's designated representative, 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.

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

(4) Whenever possible, all corrective action activities must meet the criteria established by MTCA and any pertinent local ordinances or requirements.

[Statutory Authority: Chapter 70.149 RCW. 97-06-080, § 374-70-100, filed 3/3/97, effective 4/3/97; 96-01-101, § 374-70-100, filed 12/19/95, effective 1/19/96.]

WAC 374-70-110 Repealed. See Disposition Table at beginning of this chapter.

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; and

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

(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. 97-06-080, § 374-70-120, filed 3/3/97, effective 4/3/97; 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 subject to public disclosure under chapter 42.17 RCW.

(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. 97-06-080, § 374-70-130, filed 3/3/97, effective 4/3/97; 96-01-101, § 374-70-130, filed 12/19/95, effective 1/19/96.]

**Chapter 374-80 WAC
HEATING OIL TANKS**

WAC

374-80-010	Authority and purpose.
374-80-020	Definitions.
374-80-030	Communications.
374-80-040	Procedures.
374-80-050	Reimbursement.
374-80-060	Liability.

WAC 374-80-010 Authority and purpose. The purpose of this chapter is to establish a program for providing informal advice and technical assistance to the owners and operators of active or abandoned heating oil tanks if contamination resulting from a release from a heating oil tank is suspected.

[Statutory Authority: Chapter 70.149 RCW. 97-20-094, § 374-80-010, filed 9/29/97, effective 10/30/97.]

WAC 374-80-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

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

(2) "Active heating oil tank" means a consumptive use heating oil tank that is in use.

(3) "Agency" means the Washington state pollution liability insurance agency (PLIA).

(4) "Corrective action" means those actions reasonably required to be under-taken by an owner or operator 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, 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.

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

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

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

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

(9) "Release" means any intentional or unintentional entry of heating oil into the environment.

(10) "Service provider" means an independent contractor responsible for site assessment, testing or analysis of the results of testing.

(11) "Site assessment" means an investigation of a heating oil tank site to determine if a release of heating oil has occurred.

(12) "Sampling and testing" means an approved and recognized technique(s) or procedure(s) for measuring or determining the presence and extent of hydrocarbons in soil and/or water.

[Statutory Authority: Chapter 70.149 RCW. 97-20-094, § 374-80-020, filed 9/29/97, effective 10/30/97.]

WAC 374-80-030 Communications. All communications with the agency shall be addressed to:

Director
Pollution Liability Insurance Agency
1015 10th Avenue SE
PO Box 40930
Olympia, WA. 98504-0930
Telephone: (360) 586-5997 or (800) 822-3905

[Statutory Authority: Chapter 70.149 RCW. 97-20-094, § 374-80-030, filed 9/29/97, effective 10/30/97.]

WAC 374-80-040 Procedures. (1) The agency will provide, as resources permit, informal advice and technical assistance to the owners and operators of active or abandoned heating oil tanks if contamination resulting from a release from an active or abandoned heating oil tank is suspected. Advice and assistance regarding administrative and technical requirements may include observation of testing, site assessment, as well as review of the results of reports and other appropriate review activities approved by the director.

(2) Such advice and assistance will be provided only upon request by the owner of a heating oil tank. If the operator of a heating oil tank is not the owner, the operator must provide the agency with specific written authorization of the owner before advice and assistance is provided, or before a site is visited by a representative of the agency.

(3) To receive informal advice and assistance under this program, the owner or operator of an active or abandoned heating oil tank must submit an application, provided by the agency, requesting advice and assistance, and agreeing to the terms of the program.

(4) Upon receipt of a request for advice and assistance, the agency will provide the tank owner or operator:

(a) Information regarding procedures for the program;

(b) An application requesting advice and assistance;

(c) An agreement between the tank owner and the agency regarding the procedures and reimbursement requirements of the program;

(d) Sampling, testing and assessment protocol approved by the director; and

(e) Suggested service provider fee limits for labor, equipment and materials, and for sampling and testing.

(5) Advice and assistance provided under the program may include:

(a) Observation of sampling and testing, site assessment or other appropriate assessments scheduled by the tank owner;

(b) Interpretation of the results of testing and/or assessment(s);

(c) A report from PLIA to the heating oil tank owner of the results of testing and/or assessment(s); and

(d) Other appropriate activities approved by the director.

(6) The heating oil tank owner or operator will select a service provider to perform sampling and testing, site assessment or other appropriate assessments. The tank owner or operator will enter into an agreement with the service provider regarding scope or extent of work and fees for services.

(7) Advice and assistance will be provided only if sampling and testing as well as site assessment are performed in accordance with sampling, testing and assessment protocol approved by the director.

(8) Advice and assistance will be provided only if a representative of the agency is present during any and all testing and site assessment activity to ensure that tests are properly conducted, samples properly taken and assessment activities correctly conducted. The original copy of the results of all testing and site assessment activities must be forwarded to the agency for review and evaluation.

(9) Upon completion of review and evaluation, the agency will, in writing, inform the heating oil tank owner of the results of review and assessment of data. The agency report will note whether it appears there is or is not contamination present at the site. If contamination is discovered, the report will note whether or not the contamination appears to be a threat to human health and the environment. If the contamination does appear to be a threat to human health and the environment, the heating oil tank owner will be advised of the requirement for corrective action. The determination as to whether or not the contamination appears to be a threat to human health and the environment will be made in accordance with the terms and requirements of the

Model Toxics Control Act (Chapter 70.105D RCW) and its regulations (Chapter 173-340 WAC).

[Statutory Authority: Chapter 70.149 RCW. 97-20-094, § 374-80-040, filed 9/29/97, effective 10/30/97.]

WAC 374-80-050 Reimbursement. (1) The agency shall collect, from the heating oil tank owner or operator requesting advice and assistance, the costs incurred in providing such advice and assistance.

(2) Funds received by the agency from cost reimbursement must be deposited in the heating oil pollution liability trust account.

(3) Costs incurred that shall be covered in reimbursement may include travel costs and expenses associated with monitoring site assessment, review of reports and analyses and preparation of written opinions and conclusions. The fee for such advice and assistance will be \$350.00.

(4) The fee must be paid prior to the agency issuing its report of review and assessment of data.

[Statutory Authority: Chapter 70.149 RCW. 97-20-094, § 374-80-050, filed 9/29/97, effective 10/30/97.]

WAC 374-80-060 Liability. (1) The state of Washington and/or the pollution liability insurance agency accepts no liability, nor portion of liability, from the heating oil tank owner or operator.

(2) The state of Washington, the pollution liability insurance agency, and its officers and employees are immune from all liability, and no cause of action arises from any act or omission in providing, or failing to provide, advice, opinion, conclusion, or assistance under this program.

[Statutory Authority: Chapter 70.149 RCW. 97-20-094, § 374-80-060, filed 9/29/97, effective 10/30/97.]

Title 380 WAC PRINTING AND DUPLICATING COMMITTEE

Chapters

380-10 Practice and procedure.

Chapter 380-10 WAC PRACTICE AND PROCEDURE

WAC

380-10-010 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

380-10-010 Regular meeting dates. [Order 1, § 380-10-010, filed 11/14/73.] Repealed by 98-01-114, filed 12/18/97, effective 1/18/98. Statutory Authority: RCW 43.77.040.

WAC 380-10-010 Repealed. See Disposition Table at beginning of this chapter.

Title 388 WAC SOCIAL AND HEALTH SERVICES, DEPARTMENT OF (PUBLIC ASSISTANCE)

Chapters

- 388-11** Child support—Obligations.
- 388-14** Support enforcement.
- 388-15** Social services for families, children and adults.
- 388-21** Diversity initiative.
- 388-43** Deaf and hard of hearing services.
- 388-45** The state-funded food assistance program for legal immigrants.
- 388-46** Recipient fraud.
- 388-49** Food assistance programs.
- 388-52** Services involving other agencies.
- 388-55** Refugee assistance.
- 388-61** Family violence.
- 388-70** Child welfare services—Foster care—Adoption services—Services to unmarried parents.
- 388-71** Interstate compact on the placement of children.
- 388-73** Child care agencies—Minimum licensing/certification requirements.
- 388-76** Adult family homes minimum licensing requirements.
- 388-78** Support services for assessment and employment and training programs in the family independence program.
- 388-86** Medical care—Services provided.
- 388-87** Medical care—Payment.
- 388-96** Nursing home accounting and reimbursement system.
- 388-110** Contracted Residential Care Services: Assisted living services, enhanced adult residential care, and adult residential care.
- 388-165** Consolidated emergency assistance program—Social services (CEAP-SS).
- 388-200** Financial and medical assistance—General provisions.
- 388-201** Success through employment program (STEP).