

Title 374 WAC

POLLUTION LIABILITY INSURANCE AGENCY

Chapters

- 374-20** Public records.
- 374-30** Reserves.
- 374-40** Practice and procedure.
- 374-60** Underground storage tank community assistance program.
- 374-70** Heating oil pollution liability insurance program.
- 374-80** Heating oil tanks.

Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.

Chapter 374-20 WAC PUBLIC RECORDS

WAC

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

DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 374-50 INSURANCE ELIGIBILITY ASSESSMENT REIMBURSEMENT

- 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 Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.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 Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.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 Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.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 Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.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 Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.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 Repealed by 98-01-053, filed 12/10/97, effective 1/10/98.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.]

WAC 374-20-010 Purpose. The purpose of this chapter is to implement those provisions of RCW 42.17.250 through 42.17.320 relating to access to public records.

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

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

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

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

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

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

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

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

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

(2) The principal administrative and appointing officer of the agency is the director. The director may designate other officers or employees of the agency to act in his or her behalf in the director's absence or with respect to those mat-

ters in which so doing would enhance the efficiency of the agency's operations.

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

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

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

(2) Availability of public records is subject to the exemptions and requirements of RCW 42.17.310, 42.17.315, and 70.148.060.

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

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

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

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

- (a) All records issued before July 1, 1990, for which the agency has maintained an index;
- (b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010(1) and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;
- (c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;
- (d) Interpretive statements as defined in RCW 34.05.010(8) that were entered after June 30, 1990; and
- (e) Policy statements as defined in RCW 34.05.010(14) that were entered after June 30, 1990.

(2) Each index shall list the records they contain by date of issue, number, addressee, subject matter, or other identifying information appropriate to the type of record.

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

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

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

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

REQUEST FOR PUBLIC RECORDS

Date Time

Name

Address

.....

Representing

Description of Records:

.....

.....

.....

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

.....

Signature

Number of copies

Number of pages

Per page charge \$

Total charge \$

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

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

- (a) The name and address of the person making the request;
- (b) The organization or group that the person represents;
- (c) The time of day and the calendar date on which the person wishes to inspect the public records;
- (d) A description of the public records requested;
- (e) A statement whether access to copying equipment is desired;
- (f) A phone number where the person can be reached in case the public records officer or designee needs to contact the person for further description of the material or any other reason;
- (g) A statement that the record will not be used for commercial purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1999 Ed.)

Chapter 374-30 WAC RESERVES

WAC

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) In the event that the costs and expenses associated with a claim change during the claim adjustment and settle-

ment process, the director shall order that the loss reserve established for that claim be adjusted to reflect changes in the program's reinsurance reimbursement obligation. Such adjustments shall consist of additional transfers of funds from or to the unrestricted trust account balance as required in each case.

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

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

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

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

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

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

WAC 374-30-050 Surplus reserves—Establishment and adjustment. The director shall establish a surplus reserve, consisting of an accounting segregation of funds from the unrestricted trust account balance, for the program in order to protect the program and the state against unexpected catastrophic losses and in order to establish a financial foundation for the program that will be acceptable to commercial insurers and insurance industry regulatory authorities. The surplus reserve shall be established as soon as practicable following the effective date of this rule, and shall be adjusted by the director from time to time as needed. In establishing and adjusting the surplus reserve, the director shall consider the following:

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

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

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

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

(5) Advice and information from the Washington insurance commissioner, insurance industry advisors, the pollu-

[Title 374 WAC—p. 4]

tion liability insurance program technical advisory committee, and other knowledgeable persons.

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

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

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

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

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

Chapter 374-40 WAC PRACTICE AND PROCEDURE

WAC

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

WAC 374-40-010 Adoption of model rules. The model rules of procedure contained in chapter 10-08 WAC, as they exist now or may be hereafter amended are, to the extent they are not inconsistent with the rules contained in this chapter, adopted as the rules of procedure before this agency. The rules in this chapter will, to the extent of any conflict with the model rules of procedure, be deemed to supersede the conflicting model rules of procedure.

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

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

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

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

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

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative

agencies of such other state, and if not otherwise prohibited by Washington state law;

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

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

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

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

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

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

Chapter 374-60 WAC

UNDERGROUND STORAGE TANK COMMUNITY ASSISTANCE PROGRAM

WAC

374-60-010	Authority and purpose.
374-60-020	Definitions.
374-60-030	Appeals.
374-60-040	Communications.
374-60-050	Documents—When filed.
374-60-060	Applications.
374-60-070	Eligibility—Private owners and operators.
374-60-080	Eligibility—Local government entities.
374-60-090	Eligibility—Rural hospitals.
374-60-100	Evaluation.
374-60-110	Funding.
374-60-120	Grant management.

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

This chapter recognizes the hardship posed by loss of local sources of petroleum products faced by rural and remote communities, local governments and rural hospitals due to an inability to meet U.S. Environmental Protection Agency and department of ecology regulations and requirements for petroleum underground storage tanks. The underground storage tank community assistance program will award grants to qualifying privately owned and operated sources of petro-

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leum products, local government entities, and rural hospitals meeting vital government, public health, education or safety needs for replacement or upgrading and, if required, clean up of underground petroleum storage tank sites.

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

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

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

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

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

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

(b) Local governmental entities, and;

(c) Rural hospitals.

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

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

(a) Receive an annual appropriation;

(b) Have taxing power; and

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

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

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

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

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

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

(12) "Remote rural community" means a geographic area outside the boundaries of an urban area of 10,000 or more of population, and which is either (1) in an incorporated city or town located at a distance from an incorporated city or town or urban area of 10,000 or more of population or, (2) in an area outside of an incorporated city or town and at a distance from an incorporated city or town or urban area of 10,000 or more of population.

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

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

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

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

(14) "Serious financial hardship" means:

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

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

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

(15) "Sole source" means the only retailer of petroleum products to the motoring public that is located in a city or town or, if the retailer is remote from a community, the only business within a minimum of a five-mile radius where the motoring public can purchase petroleum products.

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

(17) "UST site" means the location at which underground storage tanks are in place or will be placed. An UST site encompasses all of the property with a contiguous own-

ership that is associated with the use of the tanks. (Defined in WAC 173-360-120.)

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

[Statutory Authority: Chapter 70.148 RCW. 93-04-041 (Order 93-01), § 374-60-020, filed 1/27/93, effective 2/27/93; 91-24-048, § 374-60-020, filed 11/27/91, effective 12/28/91.]

WAC 374-60-030 Appeals. (1) An applicant may appeal any of the following listed decisions under the UST community assistance program to the director:

(a) Agency's denial of a grant application;

(b) The amount of the grant contribution allowed by the agency;

(c) Denial by the agency of a request for payment of certain costs related to the grant;

(d) Agency's refusal to sign a subordination agreement;

(e) Agency's refusal to allow an assignment of the grant agreement and deed of trust;

(f) Agency's determination of the amount of the reimbursement due in the case of a forfeiture and/or a buy out agreement; and

(g) Agency's decision to terminate or suspend the grant agreement.

(2) An applicant shall file his or her request for an appeal within thirty calendar days after the date of mailing of the letter containing the decision of the director. The appeal shall be conducted as an adjudicative hearing proceeding under chapter 34.05 RCW.

[Statutory Authority: Chapter 70.148 RCW. 96-04-005, § 374-60-030, filed 1/25/96, effective 2/25/96; 91-24-048, § 374-60-030, filed 11/27/91, effective 12/28/91.]

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

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

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

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

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

WAC 374-60-060 Applications. (1) Applications for assistance under the underground storage tank community assistance program shall be made on forms furnished by the agency in accordance with their instructions. All applications

(1999 Ed.)

shall be legible, contain all the information required and shall be accompanied by all required documents and exhibits.

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

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

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

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

(3) Applications will be prepared in two parts:

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

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

(4) The director shall provide forms to local government entities for certification that continued operation of UST(s) by the private owners and operators is necessary to meet vital local government, public health, education or safety needs. Such certification shall consist of a local government resolution certifying:

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

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

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

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

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

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

[Statutory Authority: Chapter 70.148 RCW. 93-04-041 (Order 93-01), § 374-60-060, filed 1/27/93, effective 2/27/93; 91-24-048, § 374-60-060, filed 11/27/91, effective 12/28/91.]

WAC 374-60-070 Eligibility—Private owners and operators. Private owners and operators, or a combination thereof, of an UST site may be eligible for an underground

(1999 Ed.)

storage tank community assistance program grant if they meet the following requirements:

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

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

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

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

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

(f) Provide proof that the UST(s) is insured against pollution liability or that application for pollution liability insurance has been made.

[Statutory Authority: Chapter 70.148 RCW. 93-04-041 (Order 93-01), § 374-60-070, filed 1/27/93, effective 2/27/93; 91-24-048, § 374-60-070, filed 11/27/91, effective 12/28/91.]

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

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

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

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

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

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

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

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

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

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

[Title 374 WAC—p. 7]

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

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

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

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

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

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

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

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

(c) Location and type of business.

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

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

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

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

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

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

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

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

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

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

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

[Title 374 WAC—p. 8]

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

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

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

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

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

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

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

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

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

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

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

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

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

(1999 Ed.)

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: Chapter 70.148 RCW. 96-04-005, § 374-60-120, filed 1/25/96, effective 2/25/96; 93-04-041 (Order 93-01), § 374-60-120, filed 1/27/93, effective 2/27/93; 91-24-048, § 374-60-120, filed 11/27/91, effective 12/28/91.]

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.
374-70-090	Third-party claims.
374-70-100	Service provider requirements and procedures.
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 374-70-010 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) 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 374-70-040 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:

(1999 Ed.)

(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. 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.

[Title 374 WAC—p. 12]

(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 close-out 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 accom-

plished 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 374-70-120 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.]