

WAC 173-360A-1005 Definition of terms. For the purposes of this part, the following definitions apply unless the context clearly indicates otherwise.

(1) "**Accidental release**" means any sudden or nonsudden release of regulated substances arising from operating an underground storage tank that results in a need for remedial action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

(2) "**Bodily injury**" has the meaning given to this term by applicable state law; however, this term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(3) "**Chief financial officer**," in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

(4) "**Controlling interest**" means direct ownership of at least 50 percent of the voting stock of another entity.

(5) "**Financial reporting year**" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (a) A 10-K report submitted to the U.S. Securities and Exchange Commission; (b) an annual report of tangible net worth submitted to Dun and Bradstreet; or (c) annual reports submitted to the Energy Information Administration or the Rural Utilities Service. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

(6) "**Legal defense cost**" means any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

(a) By the U.S. Environmental Protection Agency or a state to require remedial action or to recover the costs of remedial action;

(b) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(c) By any person to enforce the terms of a financial assurance mechanism.

(7) "**Local government**" has the meaning given to this term by applicable state law and includes Indian tribes. The term is generally intended to include:

(a) Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and

(b) Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

(8) "**Occurrence**" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank. This definition is intended to assist in the understanding of this part and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

(9) "**Owner or operator**," means, for the purposes of this part, when the owner or operator are separate parties, the party that is responsible for obtaining or has obtained financial assurances.

(10) "**Petroleum marketing facilities**" means all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(11) "**Property damage**" has the meaning given to this term by applicable state law. This term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage do not include remedial action associated with releases from underground storage tanks which are covered by the policy.

(12) "**Provider of financial assurance**" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in WAC 173-360A-1060 through 173-360A-1073, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, or a state.

(13) "**Substantial business relationship**" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(14) "**Substantial governmental relationship**" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an underground storage tank release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(15) "**Tangible net worth**" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

(16) "**Termination**" under WAC 173-360A-1082 and 173-360A-1083 means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

[Statutory Authority: Chapter 70A.355 RCW and 2023 c 170. WSR 23-22-041 (Order 22-16), § 173-360A-1005, filed 10/24/23, effective 11/24/23. Statutory Authority: Chapter 90.76 RCW. WSR 18-15-083 (Order 16-02), § 173-360A-1005, filed 7/18/18, effective 10/1/18.]