

WAC 173-360A-1050 Use of standby trusts. (1) Funding of trust.

Except as specified in WAC 173-360A-1055, the department must require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the department, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(a) The following conditions are satisfied:

(i) The owner or operator fails to establish alternate financial assurance within sixty days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(ii) The department determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the department pursuant to Part 7 of this chapter of a release from an underground storage tank covered by the mechanism; or

(b) The conditions of subsection (2)(a), (b)(i) or (ii) of this section are satisfied.

(2) **Drawing on trust.** The department may draw on a standby trust fund when:

(a) The department makes a final determination that a release has occurred and immediate or long-term remedial action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted remedial action as required under WAC 173-360A-0750; or

(b) The department has received either:

(i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as set forth in WAC 173-360A-1097, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or

(ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this part and the department determines that the owner or operator has not satisfied the judgment.

(3) **Priority of payments.** If the department determines that the amount of remedial action costs and third-party liability claims eligible for payment under subsection (2) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment must be remedial action costs necessary to protect human health and the environment. The department must pay third-party liability claims in the order in which the department receives certifications under subsection (2)(b)(i) of this section and valid court orders under subsection (2)(b)(ii) of this section.

(4) **Replenishment of mechanisms.**

(a) **General.** If at any time after a standby trust is funded upon the instruction of the department with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, then the owner or operator must by the anniversary date of the financial mechanism from which the funds were drawn:

(i) Replenish the value of financial assurance to equal the full amount of coverage required under WAC 173-360A-1015(2); or

(ii) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) **Combination of mechanisms.** If a combination of mechanisms was used to provide the assurance funds which were drawn upon, then the owner or operator must take the actions required under (a)(i) or (ii) of this subsection by the earliest anniversary date among the mechanisms.

(5) **Refunding of trust balance to providers.** The department will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the department determines that no additional remedial action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

[Statutory Authority: Chapter 90.76 RCW. WSR 18-15-083 (Order 16-02), § 173-360A-1050, filed 7/18/18, effective 10/1/18.]