

WSR 21-20-025
EXPEDITED RULES
COLUMBIA BASIN COLLEGE

[Filed September 24, 2021, 9:04 a.m.]

Title of Rule and Other Identifying Information: Amending Title IX Hearing Procedure for Students, WAC 132S-110-010 and 132S-110-070.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending chapter 132S-110 WAC, Columbia Basin College filed an emergency rule to update sections of chapter 132S-110 WAC, Title IX hearing procedure for students. Columbia Basin College is required by the United States Department of Education to comply with Title IX regulations.

Reasons Supporting Proposal: A recent court case holding (*Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021)) has affected the interpretation of how cross examination is used in the Title IX student process. Chapter 132S-110 WAC establishes procedures for hearing procedures for students. The proposed amendment clarifies hearing procedures regarding cross examination on how that is used in hearing procedures.

Statutory Authority for Adoption: Chapter 34.05 RCW.

Statute Being Implemented: 34 C.F.R. § 106.45 (b)(6)(i).

Rule is necessary because of federal law, and federal court decision, *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021).

Name of Proponent: Camilla Glatt, Vice President for human resources and legal affairs, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Camilla Glatt, 2600 North 20th Avenue, Pasco, WA, 509-542-5548.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The changes are required by law.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Content is explicitly and specifically dictated by statute.

This notice meets the following criteria to use the expedited repeal process for these rules:

The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This rule is being proposed under an expedited rule-making process that will eliminate the need for the college to hold public hear-

ings, prepare a small business economic impact statement, or provide responses to the criteria for legislative rules. If you object to this use of the expedited rule-making process, you must express your objections in writing and they must be sent to Camilla Glatt, Vice President for Human Resources and Legal Affairs, Columbia Basin College, 2600 North 20th Avenue, Pasco, WA 99301, by November 7, 2021.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Camilla Glatt, Columbia Basin College, 2600 North 20th Avenue, phone 509-542-5548, fax 509-544-2029, email cglatt@columbiabasin.edu, AND RECEIVED BY December 6, 2021.

September 24, 2021

Camilla Glatt

Vice President

for Human Resources
and Legal Affairs

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-110-010 Order of precedence. This procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to the college's Title IX grievance policy and regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these hearing procedures conflict with Columbia Basin College's standard disciplinary procedures, WAC 132S-100-010 through 132S-100-500 these procedures shall take precedence. The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the hearing panel and hearing panel chair.

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-110-070 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The hearing panel chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

~~(4) ((Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the hearing panel must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(5))~~ No negative inference: The hearing panel may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

~~((6))~~ (5) Privileged evidence: The hearing panel shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

WSR 21-20-089

EXPEDITED RULES

POLLUTION LIABILITY INSURANCE AGENCY

[Filed September 30, 2021, 4:08 p.m.]

Title of Rule and Other Identifying Information: Amending WAC 374-20-020 (1), (2) Definitions, 374-20-030 (1), (3), (4) Description of organization, 374-30-010 Authority and purpose, 374-30-020 (2), (5), (7) Definitions, 374-30-040 Loss reserves—Use and disposition, 374-40-020 Agency defined, 374-70-010(2) Purpose and authority, 374-70-020 (3), (6)(b)(i), (13), (19), (20) Definitions, 374-70-030 (1), (2) Responsibility, 374-70-060 (3)(h), (4)(e) Coverage, 374-70-080(2) Claims, 374-70-090(2) Third-party claims, 374-80-010 Authority and purpose, and 374-80-020 (9), (11), (15), (17) Definitions.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule changes are strictly technical and not substantive and do not alter the text of the rule. Changes reflect updated citations to recodified statutes.

Reasons Supporting Proposal: SHB 2246 reorganized Washington state's environmental health laws which resulted in recodification of the agency's statutes. This became effective on July 1, 2020, and agencies are encouraged to reflect new statutory references by July 1, 2025.

Statutory Authority for Adoption: RCW 70A.01.010 and 70A.01.020.

Statute Being Implemented: RCW 70A.01.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state legislature, governmental.

Name of Agency Personnel Responsible for Drafting: Phi Ly, P.O. Box 40930, Olympia, WA 98504-0930, 360-407-0517; Implementation and Enforcement: Pollution Liability Insurance Agency, P.O. Box 40930, Olympia, WA 98504-0930, 360-407-0520.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: RCW 34.05.353 (1)(b).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Phi Ly, Pollution Liability Insurance Agency, P.O. Box 40930, Olympia, WA 98504-0930, phone 360-407-0517, fax 360-407-0509, email phi.ly@plia.wa.gov, AND RECEIVED BY December 6, 2021.

September 30, 2021

Phi Ly

Legislative and Policy Manager

AMENDATORY SECTION (Amending WSR 20-02-005, filed 12/18/19, effective 1/18/20)

WAC 374-20-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) The terms "public record" and "writing" have the same meanings as stated in RCW ~~((42.17.020))~~ 42.17A.005.

(2) "Agency" means the pollution liability insurance agency established pursuant to chapters ~~((70.148))~~ 70A.325 and ~~((70.149))~~ 70A.330 RCW and 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 designated 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.

AMENDATORY SECTION (Amending WSR 20-02-005, filed 12/18/19, effective 1/18/20)

WAC 374-20-030 Description of organization. (1)

The agency's mailing address is:

Pollution Liability Insurance Agency
State of Washington
P.O. Box 40930
Olympia, Washington 98504-0930

The agency's office is located at:
~~((300 Desmond Drive S.E.
Lacey, Washington 98503))~~
500 Columbia St. N.W.
Olympia, WA 98501

(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 on his or her behalf in the director's absence in which so doing would enhance the efficiency of the agency's operations.

(3) The agency implements and administers the pollution liability insurance programs established by chapters ~~((70-148, 70-149, and 70-340))~~ 70A.325, 70A.330, and 70A.345 RCW.

(4) Any person wishing to request access to public records of the agency, or seeking assistance in making such a request, should contact the public records officer of the pollution liability insurance agency using one of the following contact methods by mail:

PLIA Public Records Officer
P.O. Box 40930
Olympia, WA 98504-0930
Phone: 800-822-3905
~~((Fax: 360-407-0509))~~
Email: pliamail@plia.wa.gov.

A request form is available on the agency's website at www.plia.wa.gov.

(5) The public records officer will oversee compliance with the Public Records Act, chapter 42.56 RCW. The agency will provide the fullest assistance to requestors; create and maintain an index to public records of the agency for use by the public and agency officials; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the agency.

AMENDATORY SECTION (Amending WSR 90-14-020, filed 6/27/90, effective 8/1/90)

WAC 374-30-010 Authority and purpose. This chapter is promulgated under the authority conferred by RCW ~~((70-148-040))~~ 70A.325.060. The purpose of this chapter is to implement those provisions of chapter ~~((70-148))~~ 70A.325 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.

AMENDATORY SECTION (Amending WSR 90-14-020, 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))~~ 70A.325 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))~~ 70A.325 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))~~ 70A.325.020 less reserves established under this chapter.

AMENDATORY SECTION (Amending WSR 90-14-020, 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.

AMENDATORY SECTION (Amending WSR 90-18-057, 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)) 70A.325 RCW.

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

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 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 groundwater, 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)) 70A.330 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of heating oil tanks.

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

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 that has been left unused and that is no longer connected to an oil-fired furnace used for space heating of human living or working space on the premises where the tank is located.

(2) "Accidental release" means a sudden or nonsudden release of heating oil from a 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) "Agency" means the Washington state pollution liability insurance agency established pursuant to chapter ((70.148)) 70A.325 RCW. For purposes of chapter ((70.149)) 70A.330 RCW, agency shall also mean staff or employees of the pollution liability insurance agency.

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

(5) "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.

(6)(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, except reimbursement of new tank replacement costs in accordance with RCW ((70.149.120)) 70A.330.100;

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

(iii) Costs directly associated with tank removal.

(7) "Decommissioned heating oil tank" means a heating oil tank that is no longer connected to an oil-fired furnace used for space heating of human living or working space on the premises where the tank is located and that has been taken out of operation in accordance with the International Fire Code and any pertinent local government requirements.

(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 a 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)) 70A.305 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 a 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))~~ 70A.325 RCW. For purposes of chapter ~~((70.149))~~ 70A.330 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))~~ 70A.325 RCW and established in the custody of the state treasurer. Expenditures from the account are used for the purposes of chapter ~~((70.148))~~ 70A.325 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 replacement of flooring 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 a heating oil tank.

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-030 Responsibility. (1) The director of the pollution liability insurance agency is directed by chapter ~~((70.149))~~ 70A.330 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of heating oil tanks. The agency implements and administers the pollution liability insurance program established by chapter ~~((70.148))~~ 70A.325 RCW and the heating oil pollution liability insurance program established by chapter ~~((70.149))~~ 70A.330 RCW.

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

Pollution Liability Insurance Agency

State of Washington
~~((4015 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.

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

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 a 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) 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;

(f) 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;

(g) Required soil and water sampling and testing to determine if corrective action standards have been met; and

(h) Reimbursement of new tank replacement costs in accordance with RCW ~~((70.149.120))~~ 70A.330.100.

(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 a 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, except reimbursement of new tank replacement costs in accordance with RCW ((70.149.120)) 70A.330.100;

(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; and

(i) 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

(j) 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.

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

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 a 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)) 70A.330 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 as soon as practicable after discovery that an accidental release may have occurred;

(4) The claim must be submitted to PLIA not more than thirty calendar days after the date a registered heating oil tank becomes abandoned or decommissioned. The heating oil tank owner or operator has the burden of proving, to the satisfaction of the director, that the tank has not been abandoned or decommissioned longer than thirty calendar days. The date

that the tank is abandoned or decommissioned, whichever is earlier, will be considered the first of the thirty calendar days. PLIA may accept claims after thirty calendar days if the abandoned or decommissioned tank was registered with PLIA and was replaced with a new heating oil tank that continues to be registered with PLIA;

(5) 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;

(6) 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;

(7) 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 providing documentation to PLIA that coverage will not be provided by the owner's homeowners' insurer;

(8) 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;

(9) 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;

(10) 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;

(11) 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;

(12) 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 perfor-

mance, 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;

(13) Corrective action activities and costs must be recorded by the heating oil tank service provider on the project field report form provided by PLIA;

(14) 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;

(15) 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;

(16) 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;

(17) 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;

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

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

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

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 a 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))~~ 70A.330 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 as soon as practicable after discovery that damage may have occurred from a leak or spill from a named insured's heating oil tank;

(4) The claim must be submitted to PLIA not more than thirty calendar days after the date a registered heating oil tank is abandoned or decommissioned. The heating oil tank owner or operator has the burden of proving, to the satisfaction of the director, that the tank has not been abandoned or decommissioned longer than thirty calendar days. The date that the tank is abandoned or decommissioned, whichever is earlier, will be considered the first day of the thirty calendar days. PLIA may accept claims after thirty calendar days if the abandoned or decommissioned tank was registered with PLIA and was replaced with a new heating oil tank that continues to be registered with PLIA;

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

(6) 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;

(7) 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;

(8) 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;

(9) 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;

(10) 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;

(11) All work performed by the heating oil tank service provider on behalf of the third-party claimant and the insurer must be within the terms of the contract and the approved scope of work proposal and shall not exceed costs included in the scope of work proposal. Any change(s) or deviation(s)

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

(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 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;

(14) 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;

(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.

AMENDATORY SECTION (Amending WSR 20-02-071, filed 12/26/19, effective 1/26/20)

WAC 374-80-010 Authority and purpose. The purpose of this chapter is to establish a program for providing technical assistance to a person regarding a release or suspected release of (1) heating oil from an active, decommissioned, or abandoned heating oil tank; or (2) petroleum from a qualified petroleum storage tank system. Under this program, the agency will provide advice and technical assistance regarding a completed or proposed independent remedial action and application of chapters (~~(70.149 and 70.105D)~~) 70A.330 and 70A.305 RCW.

Any opinion provided by the agency under this program is advisory only and not binding upon either the agency or the department of ecology. Participation in this program is not a settlement with the state under the Model Toxics Control Act. Persons conducting independent remedial actions do so at their own risk, and may be required to take additional remedial actions by the department of ecology if such actions are

determined to be necessary under the Model Toxics Control Act.

AMENDATORY SECTION (Amending WSR 20-02-071, filed 12/26/19, effective 1/26/20)

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) "Applicant" means the person seeking advice and assistance from the petroleum technical assistance program, whose application has been accepted by the agency.

(5) "Decommissioned heating oil tank" means a heating oil tank system that has been removed from operation by an approved method such as abandonment in place (e.g., cleaning and filling with an inert material) or by removal from the ground.

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

(7) "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 the generation of electrical energy or waste oil, hoists, pipelines, spills from transportation or a form of transport.

(8) "Heating oil tank system" means a 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.

(9) "MTCA" means the Model Toxics Control Act, chapter (~~(70.105D)~~) 70A.305 RCW and implementing regulations in chapters 173-340 and 173-204 WAC.

(10) "Petroleum" means any petroleum-based substance including crude oil or any fraction that is liquid at standard conditions of temperature and pressure. The term petroleum includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, mineral spirits, Stoddard solvents, waste oils and heating oils. The term petroleum does not include propane, asphalt, or any other petroleum product that is not liquid at standard conditions of temperature and pressure. Standard conditions of temperature and pressure are at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute.

(11) "Petroleum storage tank system" means a storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other substances. The systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents,

used oils, and heating oils. "Petroleum storage tank system" does not include any storage tank system regulated under chapter ~~((70.105D))~~ 70A.305 RCW.

(12) "Program" means petroleum technical assistance program.

(13) "Qualified petroleum storage tank system" means a storage tank system that has been identified as eligible for services under the petroleum technical assistance program by the department of ecology based on the relative risk posed by the release to human health and the environment.

(14) "Release" means any intentional or unintentional entry of petroleum into the environment including, but not limited to, a spill, leak, emission, escape, or leaching into the environment.

(15) "Remedial action" has the same meaning as defined in RCW ~~((70.105D.020))~~ 70A.305.020.

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

(17) "Site" has the same meaning as "facility" as defined in RCW ~~((70.105D.020))~~ 70A.305.020.

(18) "Site characterization" means an investigation of the nature and extent of the release.

WSR 21-20-123

EXPEDITED RULES

UNIVERSITY OF WASHINGTON

[Filed October 5, 2021, 11:44 a.m.]

Title of Rule and Other Identifying Information: Removing the first and last sentence of WAC 478-121-675(1) Evidence.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 478-121-600(2) states Part VII, which contains WAC 478-121-675(1), applies "only when 34 C.F.R. Part 106 is deemed enforceable by law and/or by United States courts." Accordingly, pursuant to this provision and the *Cardona* decision, the first sentence of WAC 478-121-675(1) no longer applies to proceedings under Part VII or any other part of the university's student conduct code.

The purpose is to remove information that no longer applies to proceedings under Part VII of chapter 478-121 WAC.

Reasons Supporting Proposal: The University of Washington seeks to repeal a portion of its student conduct code on an expedited basis under RCW 34.05.353. Specifically, the university wishes to delete the first sentence of WAC 478-121-675(1) because that provision was enacted only to implement a portion of the 2020 federal Title IX regulations—*viz.*, the first clause of the ninth sentence of 34 C.F.R. § 106.45 (b)(6)(i)—that a United States District Court held to be unlawful and set aside as arbitrary and capricious. *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021). On August 24, 2021, the Department of Education issued a letter stating that it would immediately cease enforcement of the part of 34 C.F.R. § 106.45 (b)(6)(i) that was set aside and further clari-

fied that postsecondary institutions were no longer subject to this portion of the provision.

Relevant information:

Court decision: <https://storage.courtlistener.com/recap/gov.uscourts.mad.222276/gov.uscourts.mad.222276.183.0.pdf>.

Department of Education letter: <https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VRLC.pdf>.

Statutory Authority for Adoption: RCW 28B.20.130.

Statute Being Implemented: 34 C.F.R. Part 106.

Rule is necessary because of federal court decision, *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021).

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting: Mags Aleks, Deputy Title IX Coordinator, 4311 11th Avenue N.E., Seattle, WA 98105, 206-221-7932; Implementation: Valery Richardson, Title IX Coordinator, 4311 11th Avenue N.E., Seattle, WA 98105, 206-221-7932; and Enforcement: Jane Yung, Executive Compliance and Risk Officer, 4311 11th Avenue N.E., Seattle, WA 98105, 206-221-7932.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

This notice meets the following criteria to use the expedited repeal process for these rules:

The rule is no longer necessary because of changed circumstances.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Barbara Lechtanski, Director of the University Policy and Rules Office, University of Washington, Box 351210, Seattle, WA 98195-1210, email rules@uw.edu, AND RECEIVED BY December 7, 2021.

October 5, 2021

Barbara Lechtanski
Director of the University
Policy and Rules Office

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-675 Evidence. (1) ~~((If a party or witness does not submit to questioning or cross-examination at the hearing, the hearing officer cannot rely on any statement of that party or witness in reaching a determination regarding responsibility.))~~ The hearing officer may not draw an inference about determination regarding responsibility based solely on a party's or witness's absence from the hearing or

refusal to answer questions or submit to cross-examination. This subsection does not apply to allegations of prohibited conduct under Part II of this code, WAC 478-121-103 through 478-121-173. ~~((The term "statement" does not include statements that constitute verbal conduct.))~~

(2) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions or evidence about a party's sexual behavior are offered to prove that someone other than the respondent committed the sexual conduct alleged by the complainant or such questions or evidence concern specific incidents of the parties' prior sexual behavior and such information is relevant to determine the presence or absence of consent.

(3) Except as otherwise provided in this section, evidence may be considered if, in the judgment of the hearing officer, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of such reasonably prudent person's affairs. The relevance of evidence will be determined by the hearing officer at a hearing. The hearing officer may exclude from consideration evidence that is not relevant. Statements of personal opinion or general reputation about a party or witness are generally not considered to be relevant. Evidence that is duplicative of other evidence is generally not considered to be relevant.

(4) An investigator or hearing officer may not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has voluntarily waived the privilege in writing. An investigator or hearing officer also may not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent.