

WSR 22-02-070
PROPOSED RULES
POLLUTION LIABILITY
INSURANCE AGENCY

[Filed January 5, 2022, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-07-029.

Title of Rule and Other Identifying Information: Chapter 374-45 WAC, Reporting and initial investigations.

Hearing Location(s): On February 9, 2022, at 11:30 a.m. - 1:00 p.m., virtual meeting; or February 10, 2022, at 11:30 a.m. - 1:00 p.m., virtual meeting. Meeting link can be found on the pollution liability insurance agency's (PLIA) website www.plia.wa.gov.

Date of Intended Adoption: March 12, 2022.

Submit Written Comments to: Phi Ly, P.O. Box 40930, Olympia, WA 98504-0930, email rules@plia.wa.gov, 800-822-3905, by February 6, 2022.

Assistance for Persons with Disabilities: Contact Xyzlinda Marshall, phone 360-407-0515, TTY 711 or 800-833-6388, email rules@plia.wa.gov, by February 6, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: PLIA provides an effective and efficient government funding model to support owners and operators in meeting environmental clean-up requirements for releases from heating oil tanks.

Heating oil tank owners and operators are required to comply with the state's clean-up rules, the Model Toxics Control Act (MTCA), and the requirements established in chapter 173-340 WAC when there is a suspected or known release from a heating oil tank. The proposed rules for reporting and initial investigations codifies and provides the outline for reporting the release and conducting an initial investigation of the release.

This proposal does not require changes to existing rules found in Title 374 WAC, Pollution liability insurance agency.

Reasons Supporting Proposal: This chapter supports the state's clean-up rules by outlining the reporting and initial investigation requirements for heating oil tank owners and operators. This chapter also aligns with the purpose and authority of the agency's advice and technical assistance program and reflects [the] existing process.

Statutory Authority for Adoption: RCW 70A.330.010 and 70A.330.800.

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Phi Ly, 500 Columbia Street N.W., Olympia, WA 98501, 360-407-0517.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Cost-benefit analysis is not required for an existing program. These proposed rules codify current program processes already established in interpretative guidance.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating 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.

January 5, 2022

Phi Ly

Legislative and Policy Manager

OTS-3543.1

**Chapter 374-45 WAC
REPORTING AND INITIAL INVESTIGATIONS**

NEW SECTION

WAC 374-45-010 Purpose. In order to aid the state in identifying and addressing heating oil contaminated property, this chapter sets forth the requirements for the public to report a release of heating oil from a heating oil tank and the process for the agency to conduct an initial investigation of the release. This chapter is promulgated under the authority of chapter 70A.330 RCW.

(1) Decisions by the agency are not binding on the department of ecology and do not preclude the department of ecology from requiring action based on other law.

(2) This chapter does not apply to releases from underground storage tank systems regulated under chapter 173-360A WAC. Such releases must be investigated and reported to the department of ecology in accordance with that chapter.

(3) Nothing in this chapter eliminates any obligations to comply with reporting requirements in other laws or permits.

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NEW SECTION

WAC 374-45-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

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

(2) "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 the generation of electrical energy.

(3) "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" includes a de-commissioned or abandoned heating oil tank. "Heating oil tank" does not include a tank used solely for industrial process heating purposes or generation of electrical energy.

(4) "MTCA" means the Model Toxics Control Act, chapter 70A.305 RCW and its implementing regulations, chapter 173-340 WAC.

(5) "Operator" means any person in control of, or having responsibility for, the daily operation of a heating oil tank.

(6) "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.

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

(8) "Remedial action" has the same meaning as defined in RCW 70A.305.020.

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NEW SECTION

WAC 374-45-030 Reporting a release. (1) Any owner or operator of a heating oil tank, or owner of the property where a heating oil tank is located, who has information or suspects that heating oil has been released to the environment at the property and may be a threat to human health or the environment must report such information to the agency within 90 days of discovery.

(2) Reporting is met if information has been reported to department of ecology environmental report tracking system (ERTS).

(3) To the extent known, the report to the agency must include:

(a) The identification and address of the release;

(b) Circumstances of the release and the discovery; and

(c) Any remedial actions planned, completed, or underway.

(4) The following are examples of situations that a person should generally report under this section:

(a) Discovery of heating oil that has leaked or been dumped on the ground.

(b) Contamination in a water supply well.

(c) Contaminated seeps, sediment, or surface water.

(d) Vapors in a building, utility vault, or other structure that appear to be entering the structure from nearby contaminated soil or ground water.

(e) Free product on the surface of the ground or in the ground water.

(f) Any contaminated soil or unpermitted disposal of heating oil that would be classified as a hazardous waste under federal or state law.

(5) There is no requirement to report a release to the agency when the circumstances associated with the release have been provided to the agency through a notice of potential claim under chapter 374-70 WAC, a technical assistance program application under chapter 374-80 WAC, or application to the underground storage tank revolving loan and grant program.

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NEW SECTION

WAC 374-45-040 Initial investigation of a release. (1) An initial investigation is a review of a reported heating oil tank release by the agency and documentation of reported conditions. The purpose of the initial investigation is to determine:

(a) Whether there has been a release from a heating oil tank that may pose a threat to human health or the environment;

(b) Whether further remedial action is necessary to confirm the release or to address the threat posed by the release under MTCA to protect human health and the environment;

(c) Whether emergency remedial action is necessary to confirm the release or to address the threat posed by the release; and

(d) Whether referral to another authority is appropriate.

(2) The agency will complete an initial investigation unless:

(a) The circumstances associated with the suspected or confirmed release are known to the agency and have previously been, or are currently being, evaluated by the agency or other government agency; or

(b) The agency does not have a reasonable basis to believe that there has been a release or threatened release of a hazardous substance that may pose a threat to human health or the environment.

(3) The agency will complete an initial investigation within 90 days of a release being reported.

(4) The agency may rely on another government agency or a contractor to the agency to conduct an initial investigation on its behalf, provided the agency determines:

(a) The other agency or contractor is not suspected to have contributed to the release of heating oil; and

(b) The other agency or contractor has no conflict of interest.

(5) Within 30 days of completing an initial investigation of a release, the agency will make one of the following determinations:

(a) No release of heating oil occurred.

(b) A release of heating oil occurred but does not pose a threat to human health or the environment requiring remedial action under MTCA.

(c) A release of heating oil occurred that posed a threat to human health or the environment, a remedial action to address the threat has been completed, and no further remedial action is necessary to address the threat.

(d) A release of heating oil occurred that poses a threat to human health or the environment and further remedial action other than emergency remedial action is necessary to address the threat. The

agency will notify the owner and operator and the department of ecology of the agency's determination.

(e) A release of heating oil occurred that poses a threat to human health or the environment and an emergency remedial action is necessary to address the threat. The agency will notify the owner and operator and the department of ecology of the agency's determination.

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