



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Pollution Liability Insurance Agency

- Permanent Rule
- Emergency Rule

Effective date of rule:

Effective date of rule:

Permanent Rules

Emergency Rules

- 31 days after filing:
- Other (specify) January 1, 2009 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

- Immediately upon filing.
- Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: The purpose of the changes is to clarify the tanks that are eligible for the insurance program as mandated by chapter 70.149 RCW (not "abandoned" or "decommissioned"): The changes will also establish clear timeframes for registering for the program and for filing insurance claims with the agency. These changes will clarify for our insured and potential insured the eligibility and coverage requirements.

Citation of existing rules affected by this order:

Repealed: n/a
 Amended: WAC 374-70-010 through 374-70-090
 Suspended: n/a

Statutory authority for adoption: RCW 70.149.040

Other authority : n/a

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 08-10-112 on 5/7/2005 (date).
 Describe any changes other than editing from proposed to adopted version: Retained the \$1500 property damage restoration coverage for third party claimants. Retained the definition of "property damage restoration".

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted: September 2, 2008

NAME (TYPE OR PRINT)

Lynn Gooding

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

SEP 18 2008

TIME 3:02 AM
 DATE 08.20.08 PM

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>1</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

	New	<u>0</u>	Amended	<u>8</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u> </u>	Amended	<u>8</u>	Repealed	<u> </u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

PROPOSED RULE CHANGES

**CHAPTER 374-70 WAC, HEATING OIL POLLUTION LIABILITY INSURANCE
RESPONSIVENESS SUMMARY**

September 18, 2008

The following is the Pollution Liability Insurance Agency’s response to public input on proposed changes to chapter 374-70 Washington Administrative Code (WAC), Heating Oil Pollution Liability Insurance. The changes clarify what tanks are eligible for the insurance program, establish clear time frames for registering for the program, and for filing insurance claims with the agency.

Differences between proposed and adopted changes:

WAC 374-70-020, Definitions

Proposed changes	Adopted changes
Remove the definition: (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.	Kept the definition with the following changes: “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.

WAC 374-70-060, Coverage

Proposed changes	Adopted changes
All language related to property damage restoration coverage removed.	Continue to provide restoration coverage for 3 rd party claims, but eliminate and remove all references to 1 st party claims.

Comments received regarding proposed rule changes and agency response:

1. *The \$1,500 property damage restoration coverage should not be removed for 1st or 3rd parties.*
 - a. *Removal of the property damage restoration coverage removes incentive and deters homeowners from doing a cleanup.*
 - b. *Elderly homeowners would have difficulty getting around with wheelchairs, canes, etc. without sidewalks.*

- c. *If cleanup is not done, homeowners could have bigger problems down the line such as 3rd party issues (groundwater and neighboring properties), difficulty selling, or problems during future excavation activities.*

Response: Claim costs have doubled in the last three years. In order to find cost savings PLIA chose the property restoration allowance. Other alternatives were asking insureds to pay for the insurance which is currently free, or charge a deductible. Both of these alternatives would have required additional administrative costs. We do not believe the removal of the property damage restoration coverage will discourage owners from cleaning up contamination on their property.

Each claim is unique regarding the location of the leaking tank, the magnitude of contamination, and the effects to the physical landscape that may occur in order to perform the remediation. PLIA encourages owners to work with their chosen contractor and communicate any specific concerns or special needs.

Because the policy has a \$60,000 limit for contamination cleanup, we do not believe removing the property damage restoration portion of the coverage will cause owners to postpone cleanup that may lead to bigger problems in the future.

2. *At a minimum, the \$1,500 3rd party property damage restoration coverage should be kept because homeowners do not have a choice whether to restore a neighbor's property.*

Response: The agency accepted this suggestion and modified the proposed change to keep 3rd party property damage restoration coverage.

3. *There could be a legal problem with removing the \$1,500 property damage restoration coverage from existing policies. Some homeowners may have stayed with oil heat in part due to the coverage.*

Response: We renew our master policy with Colony annually, next scheduled to occur in January 2009. Changes in coverage normally occur when policies are renewed rather than during the active policy period. Our policy renewal will reflect the applicable adopted rule changes to chapter 374-70 WAC, including the removal of 1st party property damage restoration coverage.

4. *Property damage restoration coverage is more important than tank upgrade reimbursement.*
 - a. *Steel tanks being installed now are fine.*
 - b. *More important to educate homeowners regarding lifespan of tanks rather than pay for upgrades.*
 - c. *Homeowners should be able to choose between property damage restoration and tank upgrade reimbursement.*

- d. *Suggestion to remove tank upgrade reimbursement and reduce property damage restoration coverage to \$1,000. Homeowners need an incentive to do cleanup. Homeowners do not want an eyesore (mud, etc.) or unsafe conditions.*

Response: The reference to tank upgrade reimbursements is related to Washington State House Bill 1789 which became law effective July 22, 2007. This law requires the agency to identify design criteria for heating oil tanks that provide superior protection against future leaks as compared to standard steel tank designs, and reimburse an owner or operator the difference in price between a standard steel tank and one that meets our criteria if an upgraded tank is chosen. Any such reimbursement will be included in the \$60,000 maximum coverage limit per claim.

Tank upgrade reimbursements are voluntary. House Bill 1789 does not provide an option to choose between a tank upgrade or property damage restoration.

Our heating oil pollution liability insurance provides incentive to cleanup contamination resulting from tank leaks by registering heating oil users at no cost for up to \$60,000 of coverage.

5. *The 30 day time limit to file a claim is not enough time.*
 - a. *The permitting process in some areas can take 45-60 days due to critical area checklists, etc.*
 - b. *Homeowners are often involved in projects (new furnaces, additions, etc.) and do not start calling about removing the tank until 1-3 months after project complete.*
 - c. *It often takes more than 30 days for homeowner to call service provider, service provider to give estimate, homeowner to approve estimate, and job to be scheduled.*
 - d. *Suggestion to allow 180 days to file a claim.*

Response: RCW 70.149, the governing statute for the heating oil insurance program, does not allow coverage of abandoned or decommissioned tanks. The 30 day extension is being added because the insurance policy has a 30 day extension that we want to be able to honor.

Work permits are not required prior to filing a claim with us. We plan to aggressively advertise the availability of our insurance to unregistered heating oil users next biennium (beginning July 1, 2009) and will include information regarding our required filing periods.

6. *Agreed with removing the requirement for homeowners to contact their homeowner's insurance.*

Response: None.

7. *Agreed with the proposed time allowance of 180 days to register after property transfer.*

Response: None.

8. *Agreed with removing the requirement for the owners to show proof of the tank is active at time of registering.*

Response: None.

9. *Agreed with removing the definition of active tank.*

Response: None.

AMENDATORY SECTION (Amending WSR 96-01-101, filed 12/19/95, effective 1/19/96).

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.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

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))~~ 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 ((an active)) 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) ~~((("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+)) (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.

((+6+)) (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.

((+7+)) (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;

(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 ((an active)) 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 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)) 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 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)) 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 ~~((an active))~~ a heating oil tank.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

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.

AMENDATORY SECTION (Amending WSR 96-01-101, 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 as defined in this chapter. 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.

AMENDATORY SECTION (Amending WSR 96-01-101, 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)) (2) Abandoned or decommissioned heating oil tanks ((systems)) are not eligible for coverage under the heating oil pollution liability insurance program((7~~

~~(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:~~

~~(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)), except as described in WAC 374-70-080(4) and 374-70-~~

090(4).

(3) Registration in the heating oil pollution liability insurance program must be in the name of the current owner of the property where the registered heating oil tank is located. 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)) the new property owner must submit a new registration form within one hundred eighty calendar days of the property transfer in order to avoid a lapse in coverage from the prior registered owner. The date of the property transfer will be considered the first day of the one hundred eighty calendar days. If the new owner does not register within one hundred eighty calendar days, the registration will be considered a new registration and coverage will start on the date the registration was received. Property transfers include, but are not limited to, sales, gifting, and inheritances. If a claim for coverage under WAC 374-70-080 or 374-70-090 is submitted within one hundred eighty calendar days after the property is transferred, and before the new owner has submitted a new registration, the new owner will be deemed to be the named insured for the purposes of this chapter.

(4) 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)) (5) Accidental releases occurring prior to heating oil tank registration are not eligible for coverage under the heating oil pollution liability insurance program.

((+3)) (6) 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)); however, 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.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

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))~~ 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) ~~((First-party))~~ 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;

~~((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))~~ (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.

(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))~~ 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;

(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) ~~((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))~~) (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 97-06-080, filed 3/3/97, effective 4/3/97)

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.

(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))~~ to provide documentation to PLIA that coverage will not be provided by the owner's homeowners' insurer. 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 statewide 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.

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

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)~~) 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 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)~~) 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;

~~((5))~~ (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;

~~((6))~~ (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 (~~(notification of the homeowner's insurer and determination of whether)~~) providing documentation to PLIA that coverage will not be provided by the owner's homeowners' insurer;

~~((7))~~ (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;

~~((8))~~ (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 closeout report, final cleanup report, and corrective action cost claim;

~~((+9))~~ (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;

~~((+10))~~ (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;

~~((+11))~~ (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 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))~~ (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;

~~((+13))~~ (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;

~~((+14))~~ (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;

~~((+15))~~ (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;

~~((+16))~~ (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;

~~((+17))~~ (18) PLIA will maintain all records associated with a claim for a period of ten years; and

~~((+18))~~ (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 97-06-080, filed 3/3/97; effective 4/3/97)

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))~~ 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 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))~~ as soon as practicable after discovery that damage may have occurred from a leak or spill from a named insured's ~~((active))~~ 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;

~~((+5+))~~ (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;

~~((6))~~ (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;

~~((7))~~ (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;

~~((8))~~ (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;

~~((9))~~ (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;

~~((10))~~ (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;

~~((11))~~ (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;

~~((12))~~ (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;

~~((13))~~ (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;

~~((14))~~ (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;

~~((15))~~ (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;

~~((16))~~ (17) PLIA will maintain all records associated with a claim for a period of ten years; and

~~((17))~~ (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.