



**State of Washington  
Pollution Liability Insurance Agency  
Revolving Loan and Grant Program  
Guidance**

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## List of Acronyms and Abbreviations

CAP	Cleanup Action Plan
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CSM	Conceptual Site Model
DOH	Washington State Department of Health
Ecology	Washington State Department of Ecology
EJ	Environmental Justice
EPA	Environmental Protection Agency
EV	Electric Vehicle
FA	Further Action
FS	Feasibility Study
HSL	Hazardous Sites List
MTCA	Model Toxics Control Act, chapter 70.105D RCW
NFA	No Further Action
PLIA	Washington State Pollution Liability Insurance Agency
PLP	Potentially Liable Person
PRP	Potentially Responsible Party
RCW	Revised Code of Washington
RI	Remedial Investigation
SHA	Site Hazard Assessment
VCP	Voluntary Cleanup Program
WAC	Washington Administrative Code

## Definitions

<b>Agency</b>	Washington state pollution liability insurance agency
<b>Applicant</b>	Owner or operator of a petroleum underground storage tank system who has applied for a loan or grant.
<b>Participant</b>	Owner or operator of a petroleum underground storage tank system who has been accepted into the Program.
<b>Local government</b>	A political subdivision of the state, including a town, city, county, special purpose district, or other municipal corporation.
<b>Operator</b>	A person in control of, or having responsibility for, the daily operation of a petroleum underground storage tank system.
<b>Owner</b>	A person who owns a petroleum underground storage tank system.
<b>Petroleum Underground Storage Tank System</b>	Underground storage tank system regulated under chapter 90.76 Revised Code of Washington (RCW) <b>or</b> subtitle I of the solid waste disposal act (42 U.S.C. Chapter 82, Subchapter IX) that is used for storing petroleum.
<b>Program</b>	Revolving Loan and Grant Program
<b>Recipient</b>	Owner or operator of a petroleum underground storage tank system who has been awarded a loan or grant.
<b>Release</b>	Any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.
<b>Remedial action</b>	Any action or expenditure consistent with the purposes of MTCA to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.
<b>Underground storage tank facility</b>	The location where one or more underground storage tank systems are installed, and encompasses all contiguous real property under common ownership associated with the operation of the underground storage tank system or systems.
<b>Working day</b>	Measurement of time that refers to any day in which normal business is conducted. For purposes of this Guidance, a working day is considered Monday through Friday, excluding weekends and state holidays.

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## **Abstract/Executive Summary**

The Pollution Liability Insurance Agency (PLIA) Revolving Loan and Grant Program, in partnership with the Washington State Department of Health (DOH), will assist underground storage tank owners or operators with the costs to install new infrastructure, retrofit existing infrastructure, close an underground storage tank, or cleanup facilities contaminated by a petroleum release.

This *Pollution Liability Insurance Agency Revolving Loan and Grant Program Guidance* (hereinafter referred to as “Guidance”) provides an overview of the capital financing program and details loan and grant administrative requirements and processes. All loan and grant Applicants and Recipients are responsible to have read and understood this Guidance before entering into a Participant Agreement with PLIA for a loan or grant from the state of Washington. Until rules for the Program can be published for comment, reviewed and made final, this Guidance will govern how PLIA competitively solicits, accepts Participants, and awards loan or grants. This interim Guidance is adopted under the authority of chapter 70.340 RCW.

It is expected that successful implementation of this guidance will result in new regulatory language for the Revolving Loan and Grant Program. The upcoming rulemaking process will codify the Guidance, and address issues not adequately addressed by current authority. Information gained through implementation of this Guidance, including comments received from stakeholders and the public, will inform the future rulemaking. In addition, the Guidance is a “living document,” and is expected to change over time to reflect lessons learned, efficiencies, and unanticipated issues. Please call 1-800-822-3905 or email [pliamail@plia.wa.gov](mailto:pliamail@plia.wa.gov) with questions or comments about this Guidance.

## **1. Overview of Petroleum UST Loans and Grants Under PLIA**

The Pollution Liability Insurance Agency (PLIA), in partnership with the Washington State Department of Health (DOH), will assist underground storage tank owners or operators with the costs to install new infrastructure, retrofit existing infrastructure, close an underground storage tank, or clean up facilities contaminated by a petroleum release through the Revolving Loan and Grant Program. Through the Program, PLIA and DOH are authorized to provide a loan or grant to an owner or operator for a single UST facility for up to two million (\$2,000,000) dollars. Within the Program, PLIA will provide the oversight and technical assistance, while DOH operates the lending/repayment process.

For Applicants accepted into the Program, PLIA will guide cleanup and infrastructure scoping and will credit accepted sites with resources to conduct preliminary environmental sampling and to design a project. PLIA will provide qualified Participants with advice on how to hire contractors and consultants, who will do the necessary excavations, remove and replace contaminated soils, install equipment and execute corrective measures to ensure the tank systems no longer pose an immediate or known threat to groundwater. In certain circumstances, PLIA may conduct required cleanup work at a property, and work with the property owner on repayment. Also, grant funds may be available for a qualifying project which provides a significant public benefit.

In the 2016 Regular Session, Washington State lawmakers unanimously agreed to budget ten million dollars (\$10,000,000) a year for this Program, thereby placing petroleum product tax revenue to work for citizens' economic and health benefit. PLIA is charged with accelerating voluntary efforts by industry, landowners, and small business operators in remediating past petroleum releases, upgrading UST systems to prevent future releases, and retrofitting or installing new infrastructure to dispense renewable or alternative fuel sources. PLIA designed this Program to provide help to owners and operators of UST facilities to draw up actionable plans to remediate and revitalize their UST facilities, and provide assistance in financing those actions. PLIA's Program can offer loans to bridge gaps in funding that may have prevented tackling these problems.

The enabling act for this Program was passed by the House and Senate, signed by Governor Inslee, and filed in the Office of the Secretary of State by April 4, 2016. The Act took effect July 1, 2016 and is authorized to operate through interpretative guidance pending adoption of rules. Rulemaking is anticipated to begin in early 2017. PLIA reserves the right to amend or correct this document. The operative version of this Guidance is available on PLIA's website at [www.plia.wa.gov](http://www.plia.wa.gov).

This Guidance includes information about conditions that must be met for a UST facility to qualify for a loan and/or grant to pay for improvements. For example, if a UST facility is currently under a MTCOA Order or Decree with the Department of Ecology (Ecology), then the UST facility is not eligible to receive a loan or grant from the Program. Also, any asset acquired to the benefit of an operable UST system using PLIA proceeds must have a useful life of not less than thirteen (13) years. This is a basic requirement for capital investment by government.

As detailed in chapter 70.341 RCW, the Program has lending limits. The Program can consider improvements of up to two (2) million dollars per UST facility where that action will:

- (1) Remediate a release or threatened release from a petroleum UST system, in accordance with chapter 70.105D RCW, including investigation and cleanup;
- (2) Upgrade, replace, or remove petroleum underground storage tank systems to prevent future releases, or permanently close a petroleum underground storage tank system in accordance with chapter 90.76 RCW or subtitle I of the solid waste disposal act (42 U.S.C., chapter 82, subchapter IX), as applicable; or
- (3) Upgrade, replace, install new infrastructure or retrofit existing infrastructure at an UST facility for dispensing renewable or alternative energy for motor vehicles, including electric vehicle charging stations.

PLIA may offer qualified Participants a low-interest loan. The loan will be secondary to resources at each Participant's disposal (e.g. insurance coverage) to pay for a proposed remediation or renovation. PLIA will perform audit functions over invoices received by the Participant's selected contractor or consultant.

The capacity limits to lending should not be viewed as a barrier to participation. The enabling law set PLIA up to right-size monetary awards to keep the funded account solvent and revolving. There will be a meeting in which PLIA will assist Participants in evaluating financing options. PLIA expects that access to available capital in the Program will be competitive. For example, there are at least 2,900 properties that could potentially benefit from remediation and retrofitting.

PLIA may divide capital it can lend each year based on the volume of scored, qualified applications so that the new Program tackles both simple and complex remediation.

PLIA has operated a state administered reinsurance program for over two decades and thereby is uniquely qualified to assist owners and operators of USTs. PLIA is partnered with experienced managers at DOH who have competitively awarded and financed improvements for water treatment systems.

PLIA has a dedicated senior hydrogeologist as well as specialists in project and claims management whose experience UST owners and operators will leverage by entering this Program. Participants will hire a contractor or consultant to do the cleanup and construction work at their property. PLIA will advise Participants about reasonable expectations during a remedial action and how to ensure projects pass threshold tests and get to closure in a cost-effective manner.

## **1.1 Summary of the Process to Obtain a Loan or Grant through the Program**

A grant may be available for a qualifying project owned or operated by a public entity or for a project which provides a significant public benefit.

This section outlines steps an Applicant seeking a loan or grant through the Program must follow. Additional detail on each step is provided within this Guidance.

- 1.1.1. The owner or operator of a UST system may apply to the Program at any time. Application materials may be downloaded from [www.plia.wa.gov](http://www.plia.wa.gov). The annual deadline to be considered for the year's award cycle is the first business day of March.
- 1.1.2. PLIA will review application packets for completeness in order to score, categorize and rank-order Program Participants. Section 1.2 of this Guidance defines loan prioritization criteria and point structures that will be used to rank-order similar Applicants. There are four categories: Small-Mid Size Business; Portfolio; Retrofit and Upgrade; and Abandoned Properties. Complete applications will be sorted into categories. PLIA will provide written notice of acceptance into the Program.
  - 1.1.2.1. PLIA will notify Applicants within 30 days, via certified letter if it determines an application packet to be missing items. Any missing items must be received by PLIA on or before March 17, 2017.
  - 1.1.2.2. If an Applicant does not remedy the packet's deficiency, or if an application packet is received after the deadline for the current award cycle, the application will be placed into an un-ranked pool to compete in the next year's award cycle.
- 1.1.3. PLIA will notify Applicants accepted into the Program in writing. The acceptance letter will provide the Applicant with instruction about the intake meeting with PLIA at the agency's headquarters, at 300 Desmond Drive SE, Lacey, Washington.

- 1.1.4. Each accepted Participant<sup>1</sup> will be eligible for a preliminary planning assessment (PPA) of the UST facility by an environmental firm selected by PLIA, unless PLIA determines that an equivalent and technically sufficient pre-planning assessment has already been conducted. The total cost of each PPA may not exceed one hundred fifty thousand dollars (\$150,000), and the value of the PPA will be deducted from the total amount of financial assistance available to the Participant. The PPA will be conducted after the intake meeting. The owner or operator is not required to repay the cost of the PPA.
- 1.1.5. Each September, PLIA will rank all sites with completed PPAs, or demonstrated equivalency. For the ranking, PLIA will compare sites within each category to determine site prioritization. Applicants will be notified of their ranking and must schedule financial strategy meetings within thirty (30) days.
- 1.1.6. After the ranking, PLIA and DOH will discuss the Participant's financial and technical profile in order to offer the right-size loan options, and consider whether PLIA will fund cleanup work at the UST facility, and the Participant's need and eligibility for a grant.
- 1.1.7. At the financial strategy meeting, the agency will go over available technical reports concerning the property and existing tank systems with the Participant in order to agree on a scope of work. This meeting will also discuss costs for the scope of work at the UST facility, and options for financing through the Program.
- 1.1.8. Once the terms of financing and scope of work have been discussed and agreed to, PLIA will prepare a Participant Agreement that will include the financing terms for the Participant.
- 1.1.9. The Participant will mail a certified copy of the signed Participant Agreement to DOH. DOH will process the amortized loan described in the Participant Agreement, and use those loan funds to pay the invoices submitted from the Participant's selected contractor or consultant. Participants must initiate project action, as defined in the Participant Agreement, within twelve months of signing the agreement to retain the financial assistance.
- 1.1.10. After entering into a Participant Agreement, the Recipient is solely responsible for bidding out and scheduling work to be executed at their UST facility. PLIA will be available to provide technical advice and assistance on implementing the approved scope of work.

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<sup>1</sup> The term "Applicant" is used for the UST system owner or operator who applies to enter the Program. Once accepted into the preliminary planning assessment (PPA) process, the UST system owner or operator is referred to as a "Participant" for the program. After a Participation Agreement is signed and loan and/or grant funds are assigned, the UST system owner or operator is referred to as the "Recipient".

## 1.2 Revolving Loan and Grant Frequently Asked Questions

### What constitutes a complete application package?

A complete application will include the following:

- History of the Business
- Management Resume
- Branding Agreement (if applicable)
- Debt Schedule
- Borrower's aging of accounts receivable and account payable
- Business operating agreements and/or bylaws
- Income tax returns (3 years)
- Business financial statements (3 years)
- Personal income tax returns (3 years)
- Personal financial statement
- Refueling Agreement (if applicable)
- Income expense projections (2 years)
- Thirty six months of cash flow
- Business license
- All leases and contracts associated with the operation, site or access to tanks.
- The most recent tax assessment statement and any appraisals completed on the business premises or equipment.
- Any funding or credit denial letters.
- Environmental reports for the UST facility<sup>2</sup>
- Description of actual or potential sources of remedial action funding, including:
  - Agreements with other potentially liable persons (PLPs) and potentially responsible parties (PRPs) to help pay for remedial action costs;
  - Insurance policies and claims made against those policies; or
  - Lawsuits that have been filed to pursue a contribution claim or cost recovery claim under MTCA or CERCLA.
- Access agreement for PLIA to conduct the preliminary planning assessment
- Any other items or clarification requested by the agency in the first ten (10) working days following submission.

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<sup>2</sup> An Applicant who submits an application package for a UST facility under a MTCA order or decree with the Department of Ecology is not eligible to receive a loan or grant.

For a loan or grant to be used for remedial action at a UST facility, an Applicant must provide the following:

- Agreement that the Applicant will expend all moneys available under the Applicant's financial assurance; or
- A demonstration that all moneys available under the Applicant's financial assurance have been spent; or
- A demonstration that a claim has been made on the Applicant's financial assurance and that claim has been denied; and
- A signed access agreement allowing PLIA, and its representatives, access rights to the property on which the UST facility is located to conducted data collection and monitoring.

### **How will PLIA rank sites into the four different categories?**

PLIA will rank applications into four categories: Small and Mid-Size Businesses; Portfolio; Retrofit and Upgrade; and Abandoned Properties. Funding for each category will be proportional to the number of applications received each year.

The following factors will be used to categorize applications:

Small and Mid-Sized Businesses:

- Owner or Operator is applying on behalf of 1-9 separate properties.
- Application includes data showing the existence of contaminated media (i.e. soil, groundwater, or air).

Portfolio of Sites:

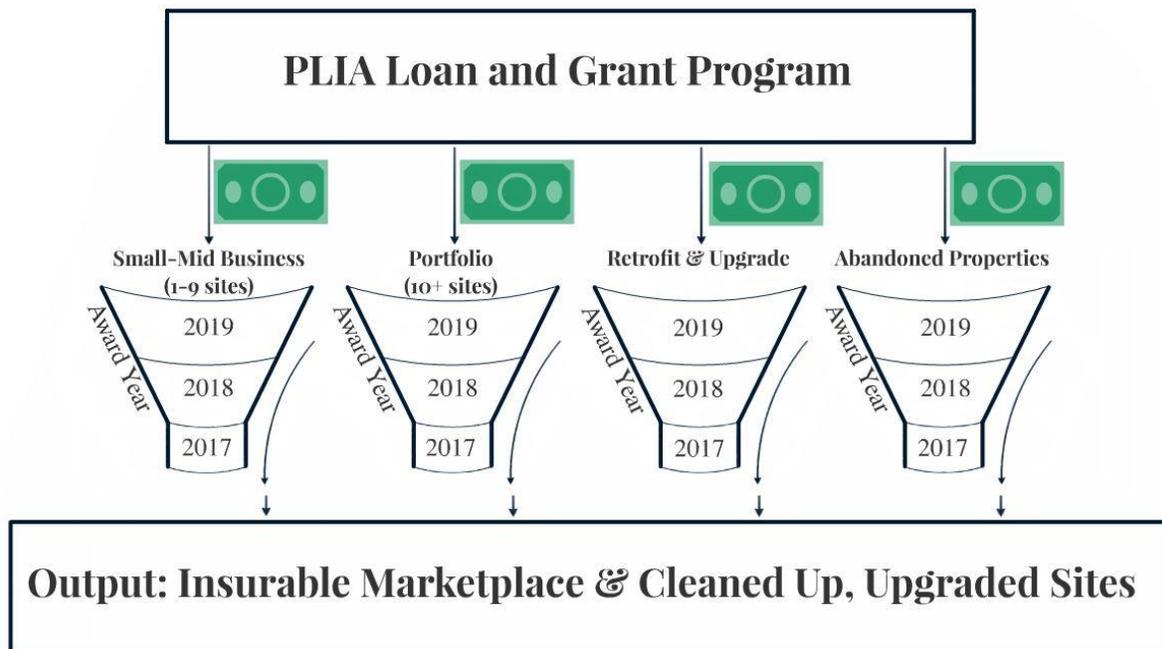
- Owner or Operator is applying for 10 or more properties.
- Application includes data showing the existence contaminated media (i.e. soil, groundwater, or air).

Retrofit and Upgrade Sites:

- Owner or Operator plans to upgrade or install new infrastructure only, and does not know or suspect contaminated media (i.e. soil, groundwater, or air).

Abandoned Properties:

- No significant economic activity has occurred on the property for one or more years or property taxes owed on the real property are one or more years overdue.



### **What is discussed at the Intake Meeting?**

After accepting the completed application, PLIA will schedule an intake meeting to discuss suitability of the project for the Program and to review the site’s eligibility for a PPA or demonstration of equivalency. The intake meeting will include introductions and an overview of the purpose of the Program, the Applicant’s proposed project, and the next steps to obtain a loan (or grant, if applicable).

### **What is the Preliminary Planning Assessment (PPA)?**

Applicants who have received an acceptance letter, and completed the intake meeting with PLIA, may be eligible for a PPA. PLIA will review existing data to identify possible data gaps. If PLIA determines that existing technical data are insufficient, PLIA’s environmental consultant will complete a PPA. PLIA’s environmental consultant will review existing data and complete a remedial investigation of the site to fill in any outstanding scientific data gaps regarding:

- Contamination at the UST facility.
- Review the status of the UST system.
- Complete pre-construction planning for infrastructure upgrades.

Once completed, the PPA will be used to determine a scope of work to address any required remedial actions and infrastructure upgrades needed at the UST facility.

Cooperation with PLIA and PLIA's environmental consultant is critical for participation in the Program. Participants must respond to a request for information or property access by PLIA or PLIA's environmental consultant within thirty (30) days, or the Participant's application packet will be placed into an un-ranked pool to compete in the next year's award cycle.

The work required to complete a PPA may include, but is not limited to:

- Soil vapor and groundwater borings;
- Laboratory analysis of soil, vapor and groundwater samples;
- Development of a conceptual site model;
- Development of a cleanup scope of work; and
- Design specifications for alternative fuel infrastructure.
- Property value appraisal.

PLIA may determine that a PPA is not necessary if the information and data about the UST facility, including any release of petroleum and/or the proposed infrastructure upgrades is equivalent to that which would normally be collected in the PPA process.

The cost associated with the PPA may not exceed one hundred fifty thousand dollars (\$150,000), and represents a deduction from the two million dollar (\$2,000,000) total lending limit under the Program.

Every September, sites with completed PPAs will be ranked by PLIA to prioritize each site within its category based on pre-established ranking criteria (see next section). PLIA will again review your site to ensure that your project continues to meet the statutory purpose of the Program. This review will include the estimated cost to implement the proposed scope of work. PLIA and DOH will also critically examine your ability to pay. At this point in the process, PLIA may decline to offer a Participant a loan under the Program, and will explain the reason in writing.

## What Criteria Will PLIA Use to Prioritize Applications for Loans and Grants?

Criteria	Explanation of Criteria	Points/Scoring <sup>3</sup>
Age of tank(s)	Older tanks are more likely to fail/have failed. Scoring is based on tank age (25 years +).	25
Threat to public health (drinking water) to surface water and groundwater	Contamination that has potential to impact water resources.	15
Extent of historical contamination	Immediate free product removal required, and impacted groundwater present.	15
Insurance need	The inability to obtain insurance through a PLIA reinsured provider; an insurance policy that has been cancelled; or, there has been a significant premium increase.	13
Financial need	Owner/operator has documentation of financing denial.	10
Current insurance policy exceeded	Owner/operator exceeded their current insurance policy limit before completing cleanup.	8
Environmental Justice	Meeting the needs of a highly impacted environmental justice community <sup>4</sup> . Revitalizing the community that surrounds the property by transforming the project into centerpieces and drivers of community revival.	8
Community need/benefit	Isolated communities depend on the station as their source of motor vehicle fuel for essential emergency, medical, fire and police services.	6

<sup>3</sup> Applicants who applied for the 2015 Pilot Program, but were not awarded a grant, will receive an additional 10 points when applying for the Revolving Loan and Grant Program.

<sup>4</sup> PLIA defines this as a community that the agency has determined is likely to bear a disproportionate burden of public health risks from environmental pollution. This includes consideration of both minority and low income populations, and communities with disproportionate public health challenges.

<b>Interest Rate Reduction Bonus</b>	
Electric Vehicle (EV) charging station installation	Incentivize the installation of EV charging stations.

In cases where more than one Applicant has the same score as another, PLIA will use the age of the tank(s) to break the tie.

### **What is discussed in the Financial Strategy Meeting**

During this meeting, PLIA will design with the Applicant the project (e.g. UST upgrades, infrastructure improvements, etc.). This discussion will be based on the data collected during the PPA, the Applicant’s expressed needs and PLIA’s determination of what remedial actions may be necessary at the UST facility to meet MTCA requirements and/or prevent future contamination of area groundwater. PLIA will explain and evaluate the total cost of the proposed improvement with the Participant. After agreeing to a shared understanding of activity to take place at the UST facility, PLIA will provide the Participant with options for financing the agreed-to scope of work.

Options for completing the agreed-to scope of work include: 1) issuance of a Program loan; 2) completion of remedial action at the UST facility by PLIA (with repayment by the owner); and 3) issuance of a Program grant. Under the terms of the Program, the minimum amount that will be loaned or granted under the Program is fifty thousand dollars (\$50,000) per site for Applicants submitting nine (9) or fewer sites, and five hundred thousand dollars (\$500,000) per Applicant for Applicants submitting ten (10) or more sites. The maximum amount that can be loaned or granted under the Program to any owner or operator for a single UST facility is two million dollars (\$2,000,000).

PLIA anticipates that completion of the scope of work at a UST facility will be paid for through a Program loan. If the cost of the required remedial actions exceed the loan amount for which the Participant qualifies, the additional remedial action may be completed by PLIA, at PLIA’s expense, with the expectation that PLIA will be reimbursed for the costs of conducting the remedial action. Remedial action work conducted by PLIA will focus on maintaining the economic vitality of the property. The following conditions must be met for PLIA to conduct work at the Participant’s property:

- The owner or operator must receive a loan for two million dollars (\$2,000,000) or less;
- The remedial actions will be conducted in accordance with MTCA;
- The property owner must consent to:

- PLIA’s recovering remedial action costs, such as by filing a lien to recover the property value appreciation as a result of the cleanup; and
- PLIA’s entering the property to conduct the remedial actions.

If completion of the scope of work at the UST facility exceeds the loan amount for which the Participant qualifies, then PLIA may provide a grant to complete project work. A grant will only be available if the Director of PLIA finds that grant funding will achieve: 1) a more expeditious or enhanced cleanup than would otherwise occur; 2) the prevention or mitigation of unfair economic hardship; and 3) a public benefit.

## **2. Revolving Loan and Grant Program Roles and Responsibilities**

### **2.1 The Participant/Recipient**

Participant/Recipient is responsible for managing work funded by the loan and (as applicable) grant, including but not limited to:

- Submitting a complete application package.
- Complying with the terms and conditions of the loan and (as applicable) grant agreement.
- Hiring an environmental consultant to conduct the PLIA-approved scope of work.
- Conducting the remedial action consistent with:
  - MTCA;
  - PLIA staff direction;
  - The PLIA-approved work plan.
- Making a conscientious effort to control costs while meeting project objectives.
- Ensuring staff and contractor and/or consultant comply with state requirements for the documentation of expenditures and eligibility of costs prior to payment.

### **2.2 PLIA and DOH**

PLIA and DOH are responsible for implementing the Program and providing the Participant/Recipient with technical advice and assistance as the scope of work is completed at the UST facility.

PLIA will designate staff members who serve as the contact persons for all loan and grant implementation issues from application to closeout, including but not limited to:

- Helping the Applicant submit a complete application package;
- Reviewing the application package;
- Categorizing and ranking the submitted applications;
- Preparing the acceptance letter;
- Organizing the intake meeting;

- Working with PLIA staff and environmental consultant to conduct the PPA;
- Working with DOH to assess the Applicant’s ability to pay;
- Working with PLIA staff to determine the scope of work for the Applicant’s UST facility.
- Organizing the financial strategy meeting;
- Preparing the Participant Agreement;
- Working with DOH on invoice payment under the Participant Agreement.
- Arranging for audits and loan/grant closeout.

In providing technical advice and assistance for the implementation of the scope of work, PLIA will maintain open communication with all parties, focusing on the Recipient needs. In order to ensure the project progresses, PLIA will:

- Seek monthly status reports from the consultant, and discuss these with the Recipient during preliminary planning, site investigation and during construction.
- Lead monthly conference calls with environmental consultant, vendors and the Recipient to keep all parties on the same page and to answer questions the Recipient has.
- Schedule site visits as needed or when requested.
- Schedule pre-construction/kick-off meetings with consultants and the Recipient to establish clear expectations and timelines.
- As availability allows, maintain a field presence on site during construction.
- Request cleanup timelines from consultants to share with all parties.
- Follow up with Recipient after construction is completed to ensure all outstanding activities are completed to satisfaction.

### **3. Types of Projects Funded by the Program**

As detailed in chapter 70.340 RCW, the Program provides loan and grant funding of up to two million dollars (\$2,000,000) per UST facility to:

- (1) Remediate a release or threatened release from a petroleum UST system, in accordance with chapter 70.105D RCW, including investigation and cleanup;
- (2) Upgrade, replace, or remove petroleum underground storage tank systems to prevent future releases, or permanently close a petroleum underground storage tank system in accordance with chapter 90.76 RCW or subtitle I of the solid waste disposal act (42 U.S.C., chapter 82, subchapter IX), as applicable; or
- (3) Upgrade, replace, install new infrastructure or retrofit existing infrastructure at an UST facility for dispensing renewable or alternative energy for motor vehicles, including electric vehicle charging stations.

Activities which fit within these three categories are described further below.

### **3.1 Remedial Action at a UST Facility**

Recipients cleaning up a contaminated UST facility must refer to and comply with the following:

- Model Toxics Control Act chapter 70.105D RCW
- Model Toxics Control Act Cleanup Regulation chapter 173-340 WAC
- All other applicable federal, state and local requirements.

There are multiple steps to cleaning up a contaminated site in compliance with the MTCA. Below are steps to expect for any UST facility. Although the steps are presented sequentially, steps are often combined to expedite the cleanup process. These activities are usually conducted by a contractor or consultant, who the Recipient will hire.

- ❑ **Task 1: Project Scoping**: Review the project documents to ensure that the UST facility is adequately defined per WAC 173-340-200; all necessary access agreements, and preliminary project planning and scoping are conducted at this stage.
- ❑ **Task 2: Site Characterization Remedial Investigation (RI)/Feasibility Study (FS)**: Review the document to ensure that the remedial investigation and feasibility study meet the substantive requirements of WAC 173-340-350. The remedial investigation should delineate the lateral and vertical extent of contamination in their respective media (e.g. soil, groundwater and vapor); and all associated risks and receptors should be identified and addressed through a conceptual site model. For a recommended approach for completeness, please see the Ecology Checklist publication numbers 16-09-006 and 16-08-007 for the RI/FS respectively.
- ❑ **Task 3: Review Conceptual Site Model (CSM) & Cleanup Action Plan (CAP)**: Review the cleanup action plan to ensure it meets the substantive requirements of WAC 173-340-360 through 450 for cleanup action implementation and monitoring. Additionally, review the cleanup standards to ensure they have been appropriately set and applied, incorporating all potential pathways and receptors, in accordance with WAC 173-340-700 through 760. For a recommended approach for completeness, please see the Ecology CAP Checklist publication No. 16-09-008 May 2016. For the additional information on the checklists mentioned above under Tasks 2 and 3, please follow this link: <http://www.ecy.wa.gov/programs/tcp/policies/checklists.html>

- **Task 4: Report:** The Contractor shall develop a Report upon the completion of tasks 1 through 3 that meets the requirements of the MTCA described in WAC 173-340-350(7) and WAC 173-340-840.

### **Disclaimer Regarding Notices to Ecology as Regulators of USTs in the state of Washington**

For remedial action at a UST facility covered by a grant or loan, PLIA may enter the site into Ecology’s Voluntary Cleanup Program (VCP). PLIA will work with the facilities covered by a grant or loan to submit a cleanup report to the VCP for review. Costs for Ecology’s review of the activities will be paid for with loan or grant funds. Based on the review, Ecology will issue a letter stating the site or property needs “No Further Action” or issue a letter identifying what additional work is needed to meet the requirements of MTCA.

### **3.2 Upgrading or Replacing UST infrastructure**

Recipients are encouraged to upgrade existing UST infrastructure and install alternative fuel infrastructure as part of their project. With any upgrade and replacement of UST infrastructure through the Program, the equipment must have a useful life of a minimum of thirteen (13) years. UST infrastructure<sup>5</sup> includes but is not limited to the following:

- USTs;
- Piping;
- Dispensers and dispenser sumps;
- Spill and overfill prevention equipment; and
- Release detection systems for tanks and piping.

### **3.3 Closing a UST**

Recipients wishing to close a UST should become familiar with Ecology’s UST regulations, chapter 173-360 WAC, and statute, chapter 90.76 RCW. For more information, please visit <https://fortress.wa.gov/ecy/publications/publications/9052.pdf>. A Recipient must comply with these regulations if closing a UST is a part of the project.

### **3.4 Upgrading, Replacing or Installing UST infrastructure for Renewable or Alternative Energy**

Alternative fuel infrastructure may include, but is not limited to:

- Electric vehicle charging station and associated equipment; and

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<sup>5</sup> Equipment associated with an underground storage tank system includes: connected underground piping, underground ancillary equipment and containment system.

- Compatibility of power for the electric vehicle charging station.

## **4. Financial Management of Loans and Grants**

### **4.1 Program Loan and Grant Participant Agreement**

Applicants accepted into the Program are required to enter into a Participant Agreement which will set forth the terms and conditions required to receive a loan or grant. The Participant Agreement will set out the terms of the loan, the scope of work for which loan and/or grant funds may be expended, administration of the loan and/or grant funds, and the loan repayment process.

### **4.2 Administration of Loan and Grant Funds**

DOH will distribute loan and/or grant funds once the Recipient has signed a Participation Agreement, contracted with a consultant to implement the PLIA-approved scope of work, and activity has begun at the UST facility. Payments issued under the Program will be paid directly to the contractor or consultant on record who performs work at the site. The Recipient will not receive the loan and/or grant funds as a lump sum. Instead, invoices for completed work will be reviewed and signed by the Recipient to indicate approval and then reviewed by PLIA. PLIA will check the itemized invoice against the Participant Agreement and scope of work, and disallow ineligible costs. PLIA will co-sign the invoice for all eligible costs, and transfer to DOH. DOH will then process the invoice for payment, drawing from the loan and/or grant funds.

### **4.3 Contracting for Services**

The Recipient may be required to submit all proposals to PLIA for written approval before soliciting responses, awarding any contracts, or rejecting bids.

Resources on selecting a contractor or consultant by the state of Washington are available at:

Department of Ecology, How to Choose a Hazardous Waste or Used Oil Contractor – A Help Guide. [http://www.ecy.wa.gov/programs/hwtr/hwfacilities/pages/choose\\_a\\_tsd.html](http://www.ecy.wa.gov/programs/hwtr/hwfacilities/pages/choose_a_tsd.html)

Department of Ecology, How to Select an Environmental Consulting Firm.  
<http://www.ecy.wa.gov/programs/tcp/vcp/selctcon.pdf>

Department of Labor & Industries, Hiring a Contractor.  
<http://www.lni.wa.gov/TradesLicensing/Contractors/HireCon/default.asp>

#### **4.4 Eligible Costs**

All requests for payment must be reasonable and necessary to perform the PLIA-approved scope of work. Only eligible cost may be paid from the loan or grant funds. Costs not allowed become the responsibility of the Recipient. In general, an eligible cost includes but is not limited to those costs:

- Necessary to complete the scope of work.
- Reasonable for the task.
- Incurred after the effective date of the Participant Agreement and before the expiration date of the agreement.
- Allowable costs as described in the Participant Agreement.
- Consistent with the standard business practices of the consultant. A cost is not eligible if it is computed differently than costs incurred in any other activity.
- Properly documented.
- Costs for services and/or equipment received.

Only PLIA can determine if a cost is eligible under the Program. Recipients are encouraged to ask PLIA about a specific cost early and as often as necessary.

PLIA reserves the right to reject costs as excessive, even when the work is within the scope of work. As a result, some expenses may be reimbursed at less than the allowable percentages or not allowed at all. *For example:* consultant rates in excess of average market rates charged by other firms with similar expertise; purchase of a \$3,000 GPS unit when another is available for \$500 that would perform the required duties; six cameras purchased when one would do the job.

#### **4.5 Ineligible Costs**

Ineligible costs are costs not eligible for payment under the loan and/or grant.

The Recipient is responsible for understanding the terms of the Participant Agreement and this Guidance as it relates to eligibility of costs. The Recipient is fully responsible for paying any costs PLIA does not allow, even if the Recipient did not understand the cost was ineligible, or a contractor or consultant approved or purchased the item without the Recipient's knowledge or approval. *For example:* the Recipient hires a person to repaint the gas station and bills it to the loan without asking PLIA. PLIA determines painting the gas station was not needed to complete the scope of work and therefore is an ineligible cost. The Recipient bears the entire cost.

Ineligible costs include but are not limited to:

- Cost of developing the application package.
- Cost of dispute resolution under the Participant Agreement.
- Cost of activities outside the PLIA-approved scope of work.
- Costs associated with adding or removing a lien.

- Legal costs, for example: the cost of seeking legal advice; pursuing cost recovery, contribution, or insurance claims; participating in administrative hearings; pursuing penalties or civil or criminal actions against a person; defending actions taken against the Applicant; penalties incurred by the Applicant; any attorneys fees incurred by the Applicant.
- Retroactive costs (i.e., costs incurred before the effective date of the Participant Agreement).
- Advance payments or pre-payments for services and/or equipment that have not been received.

#### **4.6 Amendments to Scope of Work or the Loan and/or Grant Amount**

In general, no change orders to the PLIA-approved scope of work will be authorized. A request to increase the budget (i.e., the loan or grant amount) is likely to require the Recipient to submit another application package for review and approval.

After PLIA approves the loan and/or grant amount, and has established the scope of work, amendments to change the scope of work and/or increase the budget may only be approved by PLIA's Director. If an amendment is needed, the Recipient must request the change in writing to PLIA's Director. PLIA's Director will respond in writing within one (1) business week. Once approved, the amendment process can begin.

#### **4.7 Payment Requests and Documentation Requirements**

Requests for payment will be submitted by the Recipient or the Recipient's contractor or consultant. Requests must include a payment request form, available at [www.plia.wa.gov](http://www.plia.wa.gov), an original invoice with the business name along with supporting documentation (e.g. timesheets, receipts, etc.). Requests for payment and adequate documentation of eligible costs incurred after the loan and grant agreement signature date should be submitted to PLIA within forty-five (45) calendar days of incurring the costs. Recipients should maintain a copy of all submitted invoices for their records.

To receive payment from PLIA a Recipient's contractor or consultant must register as a statewide vendor with the Department of Enterprise Services. Information on how to register as a statewide vendor is available at

<http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>

PLIA reserves the right to question payment and refuse payment if it is outside the PLIA-approved scope of work. PLIA will not pay for:

- Ineligible costs;
- Services that have not been not completed;
- Equipment that has not been received; or
- Advances or deposits for services and/or equipment.

#### **4.8 Repayment of Loan**

Loan repayments are due thirty (30) days following the execution date of the loan agreement and shall consist of interest-only payments until the first project invoice is received. Subsequent repayments shall consist of principal and interest remaining for the term of the loan. The final payment shall be on or before the term of the loan.

An annual Notice of Action must be filed by the Recipient to retain this financial assistance. Billing statements are issued approximately one month prior to the date payment is due. The Recipient will repay the loan in accordance through the use of a check, money order, or equivalent means made payable to the Washington State Department of Health, or its successor.

#### **4.9 Repayment of PLIA’s Cost for Conducting Remedial Action**

PLIA may recover costs of remedial action work conducted by the agency from the Recipient by use of a “windfall lien.” PLIA will limit the amount of the lien to the increase in property value resulting from the remedial actions. The property will be appraised during the PPA by a third-party appraiser before PLIA begins remedial actions. The appraisal will be done by an appraiser familiar with valuing contaminated property. The appraiser will be instructed to take into account the reduced value of the property resulting from contamination. At the completion of the remedial actions, the property will be reappraised to estimate the increase in value of the property as the result of PLIA’s remedial actions. The value of the windfall lien will be the difference between the two appraisals, as well as the costs for each appraisal. If the Recipient repays PLIA the entire amount of the windfall lien, the lien will be removed from the property.

#### **4.10 Repayment of Grants**

If the Recipient of a grant for remedial action work at the UST facility receives proceeds from a) an insurance claim, b) a contribution claim, or c) a cost recovery claim under MTCA or CERCLA, then the following will occur:

- If the grant has not yet been issued, PLIA may reduce the amount of the grant by the excess proceeds; or
- If the grant has been issued, PLIA may require repayment of the grant up to the amount of the excess proceeds.

## **4.11 Termination and Suspension**

As used in this Guidance: “suspension” is an action by PLIA that temporarily withholds support of a project pending corrective action by the Participant/Recipient or a decision by PLIA to terminate the loan and/or grant; “termination” is the cancellation of a loan and/or grant, in whole or in part, at any time prior to its expiration.

- a. A loan and/or grant may be suspended or terminated in whole or in part in any of the following situations by:
  1. PLIA when the Recipient has materially failed to comply with the terms and conditions of the Participant Agreement;
  2. PLIA when the agency has other reasonable cause;
  3. PLIA and the Recipient by mutual agreement (if PLIA and the Recipient cannot reach an agreement, PLIA reserves the right to unilaterally terminate the loan and/or grant);
  4. The Recipient on written notice to PLIA setting forth the reasons for such action, the effective date, and, in the case of partial termination, the portion to be terminated or suspended (with the understanding that if PLIA determines that the unterminated portion will not accomplish the purposes of the Program it may suspend or terminate the entire loan and/or grant);
  5. PLIA in the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way. PLIA may elect to suspend the loan and/or grant until PLIA determines the funding insufficiency is resolved; or
  6. PLIA in the event Ecology places a Recipient’s site under an Administrative Order.
- b. Normally, action by PLIA to suspend or terminate a loan and/or grant will be taken only after the Recipient has been informed by PLIA of the proposed action, or informed of any deficiency on their part and given an opportunity to correct the deficiency. However, PLIA may immediately suspend or terminate a loan and/or grant without notice when it believes such action is reasonable to protect the interests of the state.
  1. When PLIA believes a loan and/or grant must be suspended or terminated, PLIA will advise the Recipient in writing of the nature of the problem and that failure to correct the deficiency may result in suspension or termination of the loan and/or grant. The Recipient will be requested to respond in writing within thirty (30) calendar days of the date of such letter, describing the action taken or the plan designed to correct the deficiency.
  2. If a satisfactory response is not received within the above period, PLIA may issue a notice immediately suspending or terminating the loan and/or grant (in whole or in part). The notice will set forth the terms of the suspension or termination and the effective date.
  3. Following termination, closeout procedures will be initiated for the loan.

- c. Circumstances may arise in which the Recipient wishes to suspend or terminate the loan and/or grant for a project. The Recipient should advise PLIA in writing. Within thirty (30) calendar days of the request, PLIA will provide an appropriate written response. Following termination, closeout procedures will be initiated for the loan.
- d. No costs incurred during a suspension period or after the effective date of a termination will be allowable, except those costs which, in the opinion of PLIA, the Recipient could not reasonably avoid or eliminate, or which were otherwise authorized by the suspension or termination notice, provided such costs would otherwise be allowable under the terms of the Participation Agreement and this Guidance.
- e. Within thirty (30) calendar days of the termination date the Recipient will furnish a summary of progress under the Program and an itemized accounting of costs incurred prior to the termination date or pursuant to c, above. Final allowable costs under a termination settlement shall be in accordance with the terms of the Participation Agreement, including this section, giving due consideration to the progress under the loan and/or grant. In no event will the total of PLIA's payments under a terminated loan and/or grant exceed the loan and/or grant amount.

#### **4.12 Appeal Process**

Because award of a loan and/or grant is discretionary, this is not an adversarial process and PLIA does not provide a formal hearing for disputes. Because factors such as Program budget and priorities factor into decisions made on a project, PLIA cannot ensure an appeal will result in an award, even if error is established in connection with a decision.

In the case of a dispute, the Recipient shall notify PLIA's Project Manager in writing of the dispute ("Informal Dispute Notice"). The parties should attempt to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the dispute cannot be resolved within those fourteen (14) calendar days, then within seven (7) calendar days, PLIA's Project Manager will issue a written decision ("Informal Dispute Decision"). The Informal Dispute Decision will state: the nature of the dispute; the Recipient's position with regards to the dispute; PLIA's position with regards to the dispute; and the extent of resolution reached by informal discussion. The decision of the PLIA Project Manager will be final, unless the Recipient directs a written appeal ("Formal Dispute Notice") to the PLIA Director within seven (7) calendar days of receipt of the Informal Dispute Decision.

The Formal Dispute Notice shall include a written statement of the dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position. PLIA's Director shall conduct a review of the dispute and issue a written decision ("Decision on Dispute") within thirty (30) calendar days of

receipt of the Formal Dispute Notice. The Decision on Dispute shall be PLIA's final decision on the disputed matter.

## **5. Reporting**

### **5.1 Technical Reports**

Any technical reports required under the scope of work shall be submitted in both electronic and in paper format to PLIA for review.

With respect to the implementation of the scope of work, the Recipient shall make the results of all sampling, laboratory reports, and/or test results generated by or on their behalf available to PLIA.

### **5.2 Progress Reports**

The Recipient's contractor or consultant shall submit to PLIA written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of the scope of work. The Progress Reports shall include the following:

- A list of on-site activities that have taken place during the month;
- Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- Description of all deviations from the scope of work during the current month and any planned deviations in the upcoming month;
- For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule;
- All raw data (including laboratory analyses) received by the Recipient during the past month and an identification of the source of the sample; and
- A list of deliverables for the upcoming month if different from the schedule.

All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of the loan and grant agreement unless otherwise specified by PLIA. Unless otherwise specified, Progress Reports and any other documents shall be sent by certified mail, return receipt requested to PLIA.

### **5.3 Final Project Reports**

A final project closeout form must accompany the contractors or consultant's final report and payment request. Final project reports summarize the entire project and its outcomes. All closeout documents should be submitted within forty-five (45) calendar days of the end of the project to ensure timely payment. The Recipient is responsible for ensuring the final project closeout form is complete and includes all the required supporting documentation.

## **5.4 Annual Financial Statements**

PLIA may periodically ask for documentation of the Participant/Recipient's annual financial statement. PLIA may review these statements for information regarding potentially liable party contributions and insurance settlements that could affect loan and/or grant funding.

## **5.5 Audits**

All loans and grants are subject to audit. PLIA has the right to audit the project for three (3) years after the project is officially finished. PLIA may also audit the project, invoices and backup documentation at any time during the project. If problems are identified, they must be corrected. If PLIA identifies any problems on invoices, all previous invoices must be reviewed and corrected. This could include repayment of loan or grant funds or adjustments to subsequent billings to reimburse PLIA for overpayments.