



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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November 17, 2017

Russell E. Olsen
Executive Director
Pollution Liability Insurance Agency
300 Desmond Drive SE
Lacey, WA 98503

Re: Substitute House Bill 1266 Implementation Issues and Clarification

Dear Director Olsen:

On behalf of Department of Ecology (Ecology), I would like to thank you and your staff at the Pollution Liability Insurance Agency (PLIA) in working together to implement Substitute House Bill 1266 (SHB1266). In our continuing efforts to present a uniform message to stakeholders, a meeting has been scheduled for December 19, 2017, in Bellevue at the Embassy Suites Hotel, 3225 – 158th Avenue SE, 98008, to meet with consultants and other interested parties. While our presentation at the Northwest Environmental Business Council Conference in October provided a high-level overview to the consulting community, the proposed December meeting will give both agencies the opportunity to address specific implementation details associated with SHB1266.

With the effective date of January 1, 2018, nearing, I know that we are all very busy working to ensure that both agencies are prepared for what is to come. This involves a significant amount of work at both agencies. While PLIA works to establish the new Petroleum Technical Assistance Program (PTAP) and adjusts to handling additional responsibilities related to heating oil tank sites, the Ecology is working to adjust our programs, policies, and work practices to support and complement PLIA's expanded role in contaminated site cleanup. Although each agency has its own job to do to ensure that we are fully prepared to efficiently implement SHB1266, it is critical that we remain aligned on some key issues to minimize both internal and external friction and confusion.

In order to help ensure the successful implementation of SHB1266 and further foster the collaborative relationship between Ecology and PLIA, I am taking this opportunity to formally state Ecology's internal policy related to SHB1266.

- Heating oil tank release responsibilities — one of Ecology's priorities with SHB1266 has been to consolidate and clarify how Washington responds to releases from heating oil tanks. Ecology is shifting all heating oil tank release (as defined within SHB1266) initial investigations and associated listing responsibilities on the Confirmed and Suspected Contaminated Sites list to PLIA.

- PTAP-eligible sites — a major goal of SHB1266 was to increase contaminated site cleanup efficiency in Washington State by allowing PLIA to manage low risk sites, freeing up additional Ecology resources to focus on higher risk sites. As such, Ecology's Voluntary Cleanup Program (VCP) will, as of January 1, 2018, no longer accept applications for sites that are eligible for PLIA's PTAP. This decision also follows the principles of "One Washington" and ensures that both Ecology and PLIA will not be conducting overlapping cleanup work throughout the state.

Along with the policy clarifications above, I also want to identify two additional issues that we believe need to be addressed in the near future.

- First, there appears to be different interpretations of the public disclosure exemption to the release of information obtained from the registration of heating oil tanks. Ecology views this as a narrow exemption that is not applicable to reports of releases of hazardous substances from registered tanks. A broad reading of this exemption would lead to excluding information about cleanup sites from the Confirmed and Suspected Contaminated Sites List. Ecology strives to have this list and the Integrated Site Information System (ISIS) available as resources for the public. We believe that excluding information about heating oil tank sites is not in the public's interest. Resolving this issue also has implications for how Ecology maintains the Environmental Covenants registry pursuant to the Uniform Environmental Covenants Act (UECA), as it would lead to a registry without sufficient information for the public.
- Second, Ecology is concerned about creating different application checklists and supporting materials describing technical assistance program eligibility. As our teams have discussed, Ecology strongly believes that a joint electronic eligibility checklist and application for our VCP and PTAP programs is in our customer's best interest. However, Ecology also understands that this entails significant effort for both agencies and to implement these practices by January 1, 2018, is unrealistic. I am glad to hear that PLIA was also committed to this goal, and look forward to Ecology and PLIA setting an ambitious – and realistic – goal of implementing this collaborative effort in 2018.

As previously discussed, coordination and collaboration between Ecology and PLIA is key to ensuring success in the efficient implementation of SHB1266 and establishing consistency between agencies and technical assistance programs. The webinar for Ecology staff, now scheduled for December 13, 2017, is an important example of this coordination and collaboration and I thank you for working with us on this. I look forward to our continued work with you and your staff. If you have any further questions or concerns, please contact me at jim.pendowski@ecy.wa.gov or (360) 407-7177.

Sincerely,



James J. Pendowski, Program Manager
Toxics Cleanup Program

cc: Cassandra García, PLIA
Nnamdi Madakor, PLIA
Kristen Evered, PLIA
Ivy Anderson, AGO
Allyson Bazan, AGO
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December 8, 2017

Jim Pendowski, Program Manager
Toxics Cleanup Program
Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: November 17, 2017 Letter Regarding Substitute House Bill 1266 Implementation Issues and Clarification

Dear Mr. Pendowski:

On behalf of the Pollution Liability Insurance Agency (PLIA), I would like to thank Ecology staff who worked on implementing the part of Substitute House Bill 1266 (SHB 1266) related to the Department of Ecology (Ecology) – the identification by Ecology of factors to determine which petroleum storage tank systems are qualified to use PLIA's technical advice and assistance program. Identification of those factors is a necessary part of the roll-out of PLIA's expanded program on January 1, 2018. PLIA is on track to meet that deadline under its re-named program, the Petroleum Technical Assistance Program (PTAP). As authorized by SHB 1266, PLIA will implement PTAP through guidance pending adoption of rules.

Thank you for your November 17 letter formally stating Ecology's internal policies related to SHB 1266. As you stated, in order to foster a collaborative relationship, it is necessary for PLIA to understand what policies Ecology is working under in regards to heating oil tank releases and the admissions process for Ecology's Voluntary Cleanup Program (VCP).

PLIA also acknowledges the importance to Ecology of the two issues brought up in your letter. In the short term, PLIA would recommend that for the first issue Ecology follow its own agency policy on responses to a Public Records Act request and the application of any exemption to disclosure of information. Regarding your second issue, as you acknowledge, additional work needs to be done to determine if a joint checklist and application is in the customer's best interest. PLIA is open to continuing the discussion, as described in the meeting request below.

In order to address the issues you have raised, I would recommend a meeting between the agencies in February 2018. To assist in a robust and productive discussion, it would be helpful for the agencies to independently identify what is needed (i.e., what is statutorily or regulatorily required) and what each agency would want (i.e., what would be helpful) for their respective

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technical assistance programs prior to the meeting. This type of identification will help as the agencies work on the future approach for the programs, as it identifies the source for requests. I will ensure that PLIA staff attending will be able to speak to policy and technical matters related to PTAP, and trust that Ecology will do the same regarding VCP. I would also recommend that Assistant Attorneys General for the agencies and technical assistance programs attend (Ivy Anderson and Allyson Bazan). Please contact Xyzlinda Marshall at xyzlinda.marshall@plia.wa.gov who can assist in finalizing a date for this meeting.

Thank you for scheduling the quarterly meetings I suggested you and I have. I appreciate your outreach via letter as open and clear communication between the agencies will benefit our shared goal – to protect human health and the environment in Washington State. As you stated, coordination and collaboration is key to ensuring success, and in this upcoming meeting we can continue that theme of working together for a greater Washington.

Respectfully,



Russell E. Olsen, MPA, Executive Director

cc: Ivy Anderson