



# **Petroleum Technical Assistance Program Guidance**

Publication No. 02-2017-19



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## List of Acronyms and Abbreviations

Ecology	Washington State Department of Ecology
EIM	Environmental Information Management
FA	Further Action
FS	Feasibility Study
HSL	Hazardous Sites List
MTCA	Model Toxics Control Act
NFA	No Further Action
PLIA	Washington State Pollution Liability Insurance Agency
PS	Partial Sufficiency
PTAP	Petroleum Technical Assistance Program
RCW	Revised Code of Washington (statute)
RI	Remedial Investigation
SHA	Site Hazard Assessment
UECA	Uniform Environmental Covenants Act
UST	Underground Storage Tank
WAC	Washington Administrative Code (rule adopted under statute)
WARM	Washington Ranking Method

## Definitions

**Customer:** The person or organization requesting services from PLIA under PTAP.

**Further Action (FA):** An opinion letter issued by the state of Washington that indicates further action is needed to meet the substantive cleanup requirements of MTCA (Chapter 173-340 WAC).

**Hazard Ranking (WARM Score):** The results of the Site Hazard Assessment (SHA) are used in the Washington Ranking Method (WARM) to yield a WARM score. This is a number between 1 and 5 where a “1” represents the highest level of risk and a “5” the lowest (WAC 173-340-330).

**Hazardous Sites List (HSL):** A semi-annual list of contaminated sites that shows sites ranked and slated for cleanup under MTCA (WAC 173-340-330).

**Model Toxics Control Act (MTCA):** A citizen-initiated toxic waste cleanup law that requires site cleanups to protect human health and the environment (Chapter 173-340 WAC).

**No Further Action (NFA):** An opinion letter issued by the state of Washington that indicates no further action is needed to meet the substantive cleanup requirements of MTCA.

**Partial Sufficiency (PS):** An opinion letter issued by the state of Washington that indicates that the substantive cleanup requirements of MTCA have been partially fulfilled by interim actions.

**Project Manager:** The person PLIA will send all official correspondence. The Project Manager must be the Customer or hired by the Customer, and is the person overseeing/conducting the remediation at the site.

**Release:** Intended or unintended discharge of a hazardous substance into the environment.

**Remedial Investigation/Feasibility Study (RI/FS):** Activities to conduct, develop, and evaluate information regarding a site to select a cleanup action.

**Revised Code of Washington (RCW):** Permanent Washington State law.

**Site Manager:** The PLIA staff member dedicated to the site. The Site Manager is the primary contact for site specific questions and will provide the technical advice and written opinion letter for the site remediation.

**Underground Storage Tank (UST):** An underground storage tank and connected

underground piping.

**Washington Administrative Code (WAC):** Washington State regulations (rules).

**Working Day:** For the purpose of this Guidance, a working day is considered Monday through Friday, excluding state holidays.

## Abstract/Executive Summary

The Pollution Liability Insurance Agency's (PLIA) Petroleum Technical Assistance Program (PTAP) expands the state of Washington's ability to provide technical assistance and written opinion letters on independent cleanups of qualifying petroleum sites.

The enabling act for this program, Substitute House Bill 1266, was passed by the House on March 6, 2017 and by the Senate on April 6, 2017. The bill was signed by Governor Inslee, and filed in the Office of the Secretary of State on April 17, 2017. PLIA's statutory authority to offer technical services under PTAP begins January 1, 2018 and may operate through interpretive guidance pending adoption of rules. PLIA reserves the right to amend or correct this document. Please visit PLIA's website for the operative version of this [Guidance](#).

This *Pollution Liability Insurance Agency Petroleum Technical Assistance Program Guidance* (hereinafter referred to as "Guidance") provides an overview of PTAP from application to termination. Applicants are responsible for reading and understanding this Guidance before entering into an Agreement with PLIA for services requested under PTAP. This Guidance will govern how PLIA accepts applicants and provides technical assistance and written opinion letters under PTAP until the adoption of rules. This Guidance is adopted under the authority of [RCW 70.149.040 \(9\)](#).

Successful implementation of this Guidance will result in new regulatory language for PTAP. The upcoming rulemaking process will codify the Guidance, and address issues not adequately covered 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 PLIA's Petroleum Technical Assistance Program

The Petroleum Technical Assistance Program (PTAP), established under the authority of [RCW 70.149.040 \(9\)](#), expands Washington State's Pollution Liability Insurance Agency's (PLIA) technical assistance program to include qualifying petroleum sites (formerly the program was limited to heating oil tanks).

PLIA has worked in collaboration with the Washington State Department of Ecology (Ecology) to determine which sites qualify for services under PTAP. The eligibility factors that will allow or disallow a site for entry into PTAP will be described in this Guidance.

PLIA can only provide services under PTAP, at the request of the applicant. Services include informal advice and assistance on the administrative and technical requirements of the [Model Toxics Control Act \(\[MTCA\] Chapter 173-340 WAC\)](#), which is the state's cleanup law. PLIA will also provide written opinions for independent remedial actions on qualifying petroleum cleanup sites.

The type of opinion letter issued by PLIA depends on whether or not the proposed or completed cleanup actions have met the substantive requirements of MTCA. Opinions include:

- No Further Action (NFA) on the Site/Property.
- Further Action (FA) on the Site/Property.
- Partial Sufficiency (PS) of the Site cleanup.

PTAP is driven by the needs of the public and was developed in response to high customer demand for petroleum-based cleanup oversight.

The Pollution Liability Insurance PLIA is uniquely qualified to provide technical assistance and written opinion letters for qualifying petroleum cleanup sites. PLIA has operated a state administered heating oil technical assistance program since 1997. Further, the senior hydrogeologist overseeing the technical aspects of PTAP has extensive knowledge of MTCA and lengthy experience coordinating cleanup oversight programs.

## ***1.1 Summary of the Process to Obtain Technical Assistance or a Written Opinion Letter Through PTAP***

This section outlines steps a Customer seeking service under PTAP must follow. Additional detail on each step is provided within this Guidance.



- 1.1.1 Customers may apply to the PTAP at any stage during the cleanup process. PLIA will accept applications [online](#) beginning January 2, 2018.
- 1.1.2 PLIA charges a one-time program fee of \$7,500. By signing the Agreement, the Customer acknowledges that the program fee is non-refundable and due prior to receiving services under PTAP. The program fee does not guarantee a No Further Action opinion by PLIA.
- 1.1.3 If the Customer submits 10 or more sites to PTAP, they will qualify for PLIA's Portfolio Management Process. The Portfolio Management Process entitles the Customer to a dedicated senior Project Manager and Technical Manager for all sites within the portfolio. Project and Technical Managers will work with the Customer to ensure an efficient process to achieve closure.
- 1.1.4 Before formal acceptance into the program, the Customer and/or Project Manager must attend an intake meeting with PLIA at the agency's headquarters located at 300 Desmond Drive SE, Lacey, Washington. The Customer and/or Project Manager will schedule the intake meeting using the online scheduling tool provided by PLIA.
  - 1.1.4.1 PLIA will mail and email a written notice of acceptance into the program, within five (5) working days of the intake meeting that includes: the PTAP project identification number, the assigned site manager, and important dates.
  - 1.1.4.2 PLIA will inform the Customer at the intake meeting if the project does not qualify for PTAP. Within three (3) business days, PLIA will follow up with a written summary of the reason for ineligibility.
  - 1.1.4.3 The Customer must provide PLIA with any revisions or additional information requested at the intake meeting within ten (10) business days. Payment, if not submitted at the meeting, is due five (5) business days following the meeting. PLIA will terminate the agreement if we do not receive requested materials or payment by the deadline and the Customer must reapply to receive services under PTAP.
- 1.1.5 PLIA's goal is to provide a written opinion letter within forty-five (45) days of receiving a request.

- 1.1.5.1 PLIA's timeline for response begins on the date when we receive all information requested from the Customer.
- 1.1.6 The project is considered terminated if a No Further Action (NFA) letter has been issued. If it is determined that Further Action is necessary to remediate the site, the Customer may submit a revised report for review.
- 1.1.7 PLIA will conduct periodic reviews, at no cost to the Customer, at sites that received a NFA and an environmental covenant is required as part of the cleanup.

## **1.2 Frequently Asked Questions About PTAP**

### **What constitutes a complete application package?**

A complete application will include the following:

- On-line application.
- Agreement.
- An intake meeting, scheduled by the customer.
- The \$7,500 program fee, paid at the intake meeting within five (5) business days following the meeting.
- Any other items or clarification requested by PLIA in the first ten (10) business days following the meeting.

### **How will PLIA determine if my site is eligible for PTAP?**

PLIA will use the following eligibility factors to determine whether to accept a site for entry into PTAP.

Low-risk petroleum sites eligible for PTAP include:

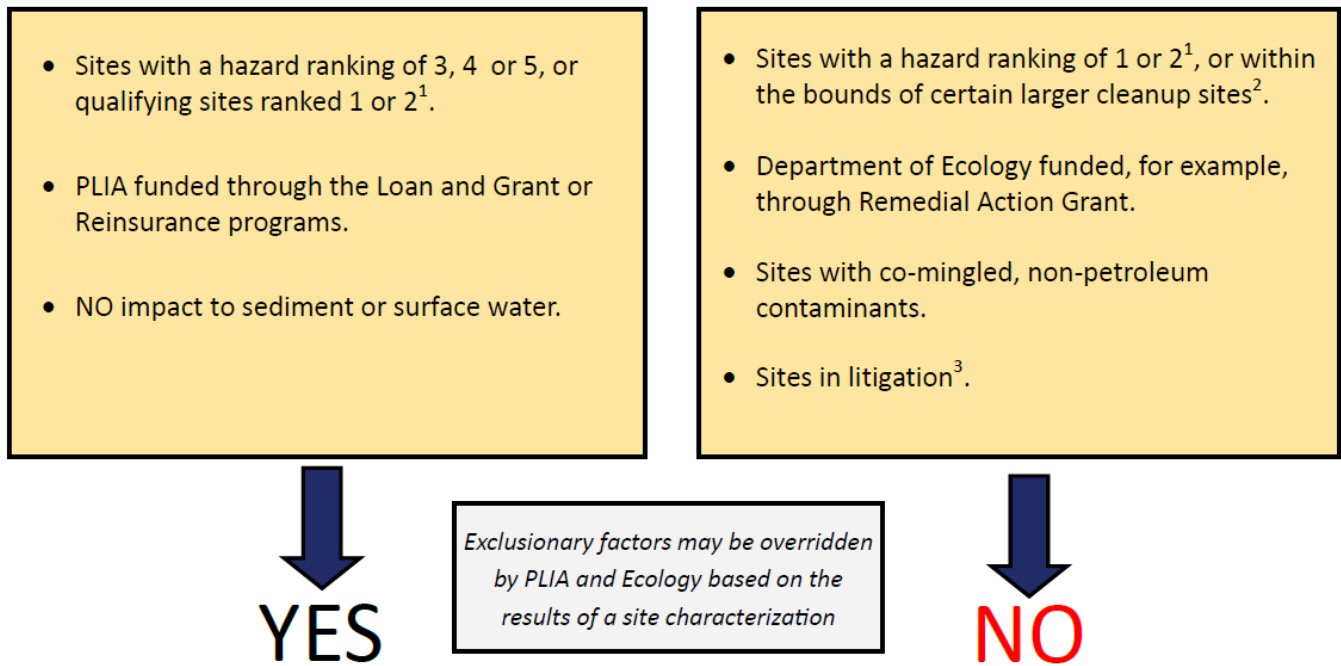
- Sites without a sediment and/or surface water pathway.
- Sites with funding from PLIA's Loan and Grant and/or UST Reinsurance program.

Sites that do not qualify for PTAP include:

- Sites with co-mingled, non-petroleum contaminants.
- Sites currently in litigation.
- Sites under active contract with Ecology.

- Sites within the bounds of, or impacting, a Superfund, Nuclear Program-managed, Industrial Section, or Dangerous Waste site.

See the following diagram for additional eligibility factors for PTAP.



<sup>1</sup>Sites with a 1 or 2 Hazard Ranking are eligible for PTAP if there is no surface water or sediment pathway.

<sup>2</sup>Sites that are located within or impact a Superfund Site, Nuclear Managed Site, Industrial Section Site or Dangerous Waste Site managed by the Hazardous Waste Toxics Reduction Program.

<sup>3</sup>Litigation may include potentially liable person (PLP), site, court supervision, agreed order or active contracts between Ecology and PLP.

### What will be discussed at the intake meeting?

The discussion will be based on what remedial actions may be necessary at the site to meet MTCA requirements and/or to prevent future contamination. Topics will include but are not limited to the following:

- A brief history of the site that includes any proposed or performed cleanup activities.
- The type of NFA being sought, property or Site NFA.
- Identifying any data gaps with respect to direct contact, ground water and vapor exposure pathways.
- Establishing a timeline commitment for cleanup based on. PLIA's goal to achieve site closure within five (5) years of entering the program.
- Future use of the site.

## **What should the Customer bring to the intake meeting?**

The Customer should bring the following to the intake meeting:

- A paper copy of the most recent technical reports relevant to the site's potential closure under MTCA.
  - All maps should be printed in color and on 11x17 paper.
- A check or money order in the amount of \$7,500, payable to the Pollution Liability Insurance Agency.

## **2 Petroleum Technical Assistance Program Roles and Responsibilities**

### ***2.1 The Customer and/or Project Manager***

The Customer is the person or organization requesting services from PLIA under PTAP, and is responsible for paying the \$7,500 program fee. The Project Manager is the person to whom PLIA will send all official correspondence. The Project Manager must be either the Customer or hired by the Customer. The responsibilities of the Customer and Project Manager include, but are not limited to:

- Submitting a complete application.
- Scheduling and attending an intake meeting.
- Hiring an environmental consultant to conduct the remedial action consistent with MTCA.
- Adhering to the timeline established at the intake meeting.
- Providing a status/progress report to the PLIA Site Manager every ninety (90) days or as determined at the intake meeting.

### ***2.2 PLIA***

PLIA is responsible for implementing the Program and providing the Customer with technical advice and written opinion letters as to whether the proposed or completed cleanup meets the substantive requirements of MTCA.

The PTAP Coordinator will serve as the contact person for PTAP implementation issues that include but are not limited to:

- Answering questions regarding the application process.
- Reviewing the application for eligibility.

- Organizing the intake meeting.
- Preparing the acceptance letter.

PLIA will designate a Site Manager for each project. The Site Manger will serve as the primary contact person for site specific questions and, under the supervision of PLIA's Technical Manager, provide the technical advice and written opinion letter for the site remediation. PLIA's goal is to provide a written opinion for each request within forty-five (45) days and for projects to close within five (5) years of entering the program. In order to ensure that the project progresses, PLIA will:

- Establish mutually agreed upon cleanup timelines with the Customer at the intake meeting.
- Request quarterly status/progress reports from the Customer.
- Schedule site visits as needed or when requested.

### 3 Remedial Action at a Petroleum UST Facility

Clean up at a contaminated UST facility must 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.

MTCA requires multiple steps to cleaning up a contaminated site. Below are steps to expect for petroleum releases. Although the steps are presented sequentially, steps are often combined to expedite the cleanup process.

**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 Project Manager 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](#).

## 4 Reporting

### 4.1 Technical Reports

The Customer and/or Project Manager should submit any reports to PLIA in electronic and paper format, with all maps printed in color on 11x17 paper. The Customer and/or Project Manager should make results of all sampling, laboratory reports, and/or tests available to PLIA.

When requesting written opinions, the Customer and/or Project manager must comply with the following reporting requirements:

- Documents submitted with geologic, hydrologic, or engineering work must be under the seal of a licensed professional as required by [Chapters 18.43 and 18.220 RCW](#).
- Environmental sampling data must be submitted in a form capable of being transferred into Ecology's Environmental Information Management (EIM) system. For instructions on how to submit the data, please refer to the Department of Ecology's [Data Requirements](#).

### 4.2 Progress Reports

The Project Manager must submit to PLIA a quarterly status/progress report that includes the following:

- A list of on-site activities that have taken place during the previous ninety (90) days.
- A detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
- A plan for recovering lost time and maintaining compliance with the schedule, due to any deviations.
- All raw data (including laboratory analyses) received by the Project Manager during the past quarter and an identification of the source of the sample.
- A list of deliverables for the upcoming month if different from the schedule.

## 5 Project Termination

Unless otherwise directed by PLIA, issuance of a No Further Action (NFA) opinion, either for the Site or for a portion of the real property located within the Site, constitutes notice of termination by PLIA.

PLIA may choose to terminate the Agreement for other reasons that include, but are not limited to:

- PLIA did not receive payment within five (5) business days following the intake meeting.
- The Project Manager failed to submit quarterly progress/status reports to PLIA.
- Failure to meet the timeline established at the intake meeting.

The date of termination is the date PLIA sends the opinion letter to the Customer.

The Customer may terminate the PTAP Agreement at any time with the understanding that the program fee is non-refundable. The date of termination is the date PLIA receives written notification from the Customer.

## 6 After Project Termination

This section offers guidance for actions that may be necessary after an NFA has been issued and the project has been terminated.

### 6.1 *De-listing of Site*

If the site has been listed on Ecology's Hazardous Sites List (HSL) PLIA will initiate the process to get the site removed from the HSL.

## **6.2 Periodic Review of Cleanup**

A periodic review consists of a review of post-cleanup site conditions and monitoring data to ensure the protection of human health and the environment. If a periodic review is required, a review must be conducted at least every five (5) years following the initiation of the cleanup ([WAC 173-340-420](#)).

- 6.2.1 PLIA will conduct a periodic review at no cost to the Customer when a NFA was issued and an institutional control is required as part of the cleanup action. An institutional control is a measure undertaken to limit activities that may impede clean up actions ([WAC 173-340-440](#)).
- 6.2.2 Environmental covenants are legal documents used to impose institutional controls (such as activity and use limitations) on parcels of real property affected by the release of hazardous substances.
- 6.2.3 The covenant must be recorded in every county where the real property subject to the covenant is located. This provides future owners notice of the controls imposed on the property. The covenant attaches to the property and is said to “run with the land” because it can be enforced against both current and future owners.

The execution, amendment, and termination of covenants are governed by the Uniform Environmental Covenants Act (UECA), [Chapter 64.70 RCW](#).

## **6.3 Rescinding an Opinion**

PLIA may rescind an opinion if it is determined that additional or different remedial action is necessary at the Site to protect human health and the environment.

Instances where an opinion may be rescinded include but are not limited to:

- The information upon which the opinion is based upon is materially false or misleading.
- The opinion is not an accurate reflection of current site conditions and is therefore misleading based on new information or a review of existing information.
- A periodic review reveals that post cleanup site conditions are not protective of human health and the environment.



## 7 Limitations of Opinions

A petroleum release may impact more than one parcel of real property; however, the written opinion only applies to the site described in the opinion letter. PLIA will indicate in the opinion letter if parcels other than the source property are impacted by the release.

PLIA's opinions do not resolve a person's liability to the state or protect a liable person from third party contribution claims. Liable persons are strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the petroleum release at the site.

The state, PLIA, and its officers and employees are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing opinions ([RCW 70.105D.0303 \(1\)\(i\)](#)).

### 7.1 Appeal Process

In the case of a dispute, the Customer must notify PLIA's Site 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 Site 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 Site Manager will be final, unless the Customer 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 must 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 will 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 will be PLIA's final decision on the disputed matter.