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Pollution Liability Insurance Agency
Policy

PLIA-led Liens	
General Topic: Programs & Technical Guidance	Policy Number: 5.03
Contact: Legislative & Policy Manager	Effective Date: July 1, 2023
References: RCW 70A.345.060(c) and (d), RCW 70A.345.070, PLIA Lien Procedure and Template, Lien Acknowledgement Letter Template	
Approval: DocuSigned by: Russell E. Olsen 1609QB043AB7449... Russell E. Olsen, Executive Director	

I. Purpose

This policy provides guidance regarding property liens filed under the Underground Storage Tank (UST) Revolving Loan and Grant Program, Chapter 70.A.345 RCW, and details the procedures required prior to funding a project.

II. Scope

This policy applies only to commercial UST applicant sites receiving a UST Revolving Loan and Grant funding via PLIA-led remedial action.

III. Definitions

PLIA-led Remedial Action is a cleanup action funded and managed by the agency. The agency may recover costs by filing a (property) lien on the UST site/facility.

Remedial Action is any work or expenditure consistent with RCW 70A.305.020 to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including but not limited to 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.

IV. Policy

A. Funding awards.

The Washington State Pollution Liability Insurance Agency (PLIA) administers the UST Revolving Loan and Grant Program (Loan & Grant Program) to provide financial assistance to owners/operators of commercial UST sites, primarily fueling stations. Funding awards are

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applied to costs incurred to: clean up contamination from UST systems; upgrade, remove, or replace outdated UST systems; and install or upgrade infrastructure. The Loan & Grant Program offers funding through grants, loans, PLIA-led remedial action, or a combination of these awards based on the review of the applicant's circumstances, financials, and ability to pay.

- Loans are funding awards that require repayment to PLIA according to the terms and conditions outlined in the loan agreement. Loan amounts are awarded after the applicant's moneys available under financial assurance, such as insurance proceeds, are exhausted.

- PLIA-led remedial action awards are offered to an applicant when grant and loan funding is unavailable or insufficient to conduct remedial action at the site/facility. Only costs for remedial action can be paid. PLIA-led remedial action awards are managed by the agency, and the work performed at the site/facility is directed by and paid for by PLIA. A PLIA-led remedial action award is not a grant; PLIA recovers the costs paid out for the remedial action, which may include filing a lien on the property of the site/facility. The lien is in place until the applicant has fully repaid the PLIA-led remedial action costs, or if the applicant sells the property and proceeds are used to pay the lien amount, or if PLIA determines it is in the public interest to remove the lien.

  Liens filed by PLIA take priority over all other liens on the property, except for local and special district property tax assessments. RCW 70A.345.070(1)(b). PLIA will provide notice of intent to file lien to the property owner and other property lien holders of record. Liens cannot be filed on property owned by local government.

B. Lien for PLIA-led cost recovery.

When an applicant's Preliminary Planning Assessment (PPA) is completed, PLIA will conduct a complete review of the applicant's financial status to determine the funding award. If a PLIA-led award is considered, PLIA will review with the applicant the requirements for cost recovery and the process for lien filing before commencing remedial action.

1. Financial Strategy Meeting with applicant.

   PLIA and the applicant will review and discuss the PPA and the scope of work required. PLIA will propose the funding award type to the applicant. A PLIA-led award may be in addition to a loan award. PLIA-led awards are subject to PLIA's completion of the lien procedures which begin after the applicant accepts the award and agrees to the terms and conditions.

2. Lien Title Search.

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PLIA and the Washington State Department of Health will conduct a UCC Title Search on the project property to identify all existing lien holders. If there are no lien holders on the project property, then PLIA-led remedial action can commence, and PLIA will proceed with notice and lien filing in the appropriate county.

3. Lien Acknowledgement Letter to other lien holders.

   If there are additional lien holders of record on the project property, then PLIA will send a Lien Acknowledgement Letter to each of the lien holders requesting acknowledgement and agreement to the potential for PLIA filing a lien in priority over the lien holder(s) of record. (PLIA liens take priority over all other liens except for local and special district property tax assessments.)

   a. Lien holders are given 30 days to respond to PLIA's letter with signature acknowledgment.

   b. Non-responses after 30 days and Lien Acknowledgment Letter signature declines are deemed as refusals and will cause PLIA to retract any PLIA-led offer. Program applicants may request from PLIA status on the Lien Acknowledgement Letter and may contact lien holders regarding the requirements of a PLIA-led remedial action award.

   c. If PLIA retracts a PLIA-led remedial action award, written notice will be given to the applicant. There is no reconsideration of a retracted PLIA-led remedial action award, and the decision cannot be appealed. Applicants may apply again in the next application cycle.

   d. If Lien Acknowledgement Letter(s) are received by PLIA, then the PLIA-led remedial action award can move forward.

4. Lien recording.

   Applicants who accept a PLIA-led remedial action award agree and consent to PLIA filing a lien for cost recovery if the PLIA invoice is not paid by the required date. Lien filing occurs when remedial action costs reach approximately $500,000. PLIA may file an additional lien when approximately $500,000 in remedial action costs are subsequently incurred. PLIA lien filing procedure is as follows.

   a. PLIA sends written notice to the property owner and any lien holders on record for the property parcel. Notice can include newspaper legal notice.

   b. Notice will include: statement of the purpose of the lien; brief description of the property parcel to be affected by the lien; and a statement of the remedial action costs incurred by PLIA related to the real property affected by the lien.

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c. Property lien is filed with the county auditor for the county of where the real property/parcel is located.

   i. PLIA Finance Manager will fill out the Property Lien Document and ensure that the document complies with statutory requirements.

   ii. Lien Document must be notarized and have attached payment of the recording fee set by the county auditor.

   iii. The county auditor records the lien and returns a confirmation to PLIA.

   iv. Applicant is responsible for payment of the lien recording.

C. PLIA-led cost recovery and lien release.

Unless it is in the public interest to remove the lien, a lien remains until PLIA has recovered all costs incurred for remedial action.

a. Applicant may repay the remedial action costs directly to PLIA by contacting the Finance Manager for a payoff amount.

b. If the property is sold, then proceeds of the sale must first be applied to the PLIA-led remedial action costs, unless a lien of higher priority is attached to the property.

c. Applicant may also request debt forgiveness for remedial action costs not recovered through property sale proceeds. The process for requesting debt forgiveness is outlined in the program's guidance document.

d. Once the PLIA-led remedial action costs are repaid, PLIA will prepare a Lien Release Statement and record this at the county auditor office where the lien was filed.

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