Washington State
Pollution Liability Insurance Agency

A canopy and fuel dispensers (Source: PLIA).

A petroleum underground storage tank (Source: PLIA).

Financial Assurance Program GUIDANCE

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Program Summary

The Washington State Pollution Liability Insurance Agency (PLIA) provides an effective and efficient government funding model to help owners and operators of petroleum underground storage tanks (USTs) meet financial responsibility and environmental cleanup requirements.

Under state and federal requirements, Chapter 173-360A WAC, Part 10 and 40 CFR Subpart H, an owner or operator of a petroleum UST must show financial responsibility by showing they can pay for cleanup and 3rd party damages when a leak occurs. Financial responsibility can be shown in many ways, including a state financial assurance program, as described in WAC 173-360A-1015.

In 2023, the Washington State Legislature approved PLIA to make the State Financial Assurance Program (FA Program), Chapter 70A.545 RCW. The FA Program gives owners and operators a financial responsibility option that meets the requirements of running a petroleum UST in the state.

The FA Program works similar to insurance, but it is not insurance and differs in large ways. PLIA guides the FA Program's use of state funds. This allows the Agency to manage cleanups of petroleum leaks to make sure those cleanups meet state requirements, Chapter 70A.305 RCW. The FA Program provides the following funding to clean up petroleum leaks:

- **Post-Enrollment Release Coverage.** Up to $2 million to address a leak of petroleum that occurred *after* enrollment of the petroleum UST.
- **Pre-Enrollment Release Coverage.** Up to $1 million to address a leak of petroleum that occurred *prior* to enrollment of the petroleum UST. The Agency can recover the costs of addressing this type of leak.

PLIA can prioritize cleanups when releases pose a serious risk to drinking water, human health, or the environment, particularly in overburdened communities and areas of vulnerable populations as defined in RCW 70A.02.005.

This guidance document supplements the FA Program rules, Chapter 374-10 WAC, by giving details about the FA Program and describing how PLIA runs the Program .

Updates to the FA Program are on PLIA's website at www.plia.wa.gov. The Agency will update this document regularly. You may also contact PLIA at 1-800-822-3905 or pliamail@plia.wa.gov for additional information about the Program.

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Definitions

Agency	Pollution Liability Insurance Agency (PLIA).
Applicant	Owner or operator of an underground storage tank who has applied for the FA Program.
Bodily injury	Documented medical costs for health effects caused from exposure to a leak from a petroleum underground storage tank. The term does not include pain and suffering.
Consent decree	A recorded legal settlement between a potentially liable person and the Department of Ecology that includes a Cleanup Action Plan that meets the state's cleanup requirements, WAC 173-340-520.
Enrollment	The status of an underground storage tank once it has been accepted into the Financial Assurance Program, the Enrollment Agreement has been signed, and the Underground storage tank is subject to coverage for petroleum leaks.
Facility	The physical location of a petroleum underground storage tank.
Facility assessment	An evaluation of a petroleum underground storage tank, its system, or its facility by the Agency. These are not regulatory inspections under Chapter 173-360 WAC.
Financial Assurance Program	A state-run program that provides funding for underground storage tank owners to meet state and federal financial responsibility requirements.
Financial assurance request (FAR)	A coverage request under the Financial Assurance Program.

Leak	Any release or spill of petroleum into the environment.
Lien	A legal claim on property until the debt owed is paid.
Milestone	Due dates for when a goal must be completed as part of a cleanup process.
Model Toxics Control Act (MTCA)	The state's cleanup law and accompanying regulations. See Chapter 70A.305 RCW for the governing statute, and Chapter 173-340 WAC for the governing regulations.
Online Community	PLIA's online, cloud-based application and data system used by the Agency's applicants, program participants, prime consultants, and third parties to submit applications, documentation, reports, and to look up project information.
Operator	A person in control of, or having responsibility for, the daily operation of a petroleum underground storage tank.
Order	Includes both an agreed order or an enforcement order, used by the Department of Ecology under the Model Toxics Control Act to detail cleanup work required to address a release of hazardous substances, as described in WAC 173-340-530 and WAC 173-340-540.
Owner	A person, or their appointed representative, legally responsible for the petroleum underground storage tank, what is in it, and the facility where the tank is located.
Participant	A UST owner or operator of a petroleum UST accepted and enrolled into the Financial Assurance Program.

Petroleum	Any petroleum-based substance, including crude oil or any fraction that is liquid at standard conditions of temperature and pressure. "Petroleum" includes, but is not limited to, petroleum and petroleum-based substances made up of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, and heating oils. (Farm or residential tanks with a capacity of less than 1,100 gallons that are used for storing motor fuel for noncommercial purposes, as well as other USTs meeting the exemptions of WAC 173-360A-0110, are excluded from the Financial Assurance Program.) The term does not include propane, asphalt, or any other petroleum product that is not liquid at standard conditions of temperature and pressure. Standard conditions of temperature and pressure are at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.
Petroleum underground storage tank, underground storage tank (UST), or tank	An underground storage tank system regulated under Chapter 70A.355 RCW, Chapter 173-360A WAC, or subtitle I of the solid waste disposal act (42 U.S.C chapter 82, subchapter IX) which is used for storing petroleum. This may include tanks owned or operated on property under the authority of either the federal government or tribal governments. Tanks excluded from this definition are detailed in the Financial Assurance Program rules.
Petroleum underground storage tank facility	The location where the tank and its system are located.
Petroleum underground storage tank system	An underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.
Prime consultant	An environmental consultant or business contracted by PLIA to perform assessment and

cleanup under the Program.

Property damage A documented negative physical impact to a structure or property from a petroleum underground storage tank leak. This term is used in the context of third-party claims and does not include contamination or damage that is addressed by a cleanup process.

Remediation Actions or costs taken to identify, eliminate, or minimize any threat posed by a petroleum leak from an enrolled UST to human health or the environment including any investigative and monitoring activities with respect to any leak of petroleum from an enrolled UST.

Site Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or any area where a hazardous substance has come to be located, other than a consumer product in consumer use.

Technical Assistance Program (TAP) A PLIA program that offers technical advice and assistance to underground storage tank owners and operators on petroleum cleanups, as described in Chapter 374-80 WAC.

Third-party claim A claim for funds from the Program by a party, other than the owner or operator, with documented bodily injury or property damage resulting from a leak of an enrolled petroleum underground storage tank. Financial assurance requests for cleanup activities on properties owned by third parties are considered requests for cleanup funds, not 3rd party claims.

I. Introduction

The State Financial Assurance Program (FA Program or Program), under Chapter 70A.545 RCW and Chapter 374-10 WAC, is an option for eligible petroleum underground storage tank (UST) owners and operators to meet their financial responsibility requirements under federal and state law, specifically Chapter 173-360A WAC, Part 10 and CFR 40 Subpart H.

Participating owners and operators of eligible USTs pay a yearly enrollment fee.

Eligible, enrolled USTs will receive the following coverage:

- **Post-Enrollment Release Coverage.** Up to $2 million, per facility, for cleanup needs, infrastructure replacements related to the petroleum leak, and third-party damages caused by a petroleum leak that occurs during the UST's enrollment.
- **Pre-Enrollment Release Coverage.** Up to $1 million, per facility, for cleanup needs to address a petroleum leak from an enrolled UST that occurred before its enrollment in the Program. The funds given by PLIA to address this kind of leak may be cost recovered by the Agency.

This guidance document provides details about the Program:

1) Application for enrollment by owners or operators of USTs.
2) Enrollment of USTs in the Program.
3) Filing a financial assurance request, requesting funds and technical assistance for cleanup and related infrastructure replacement.
4) Assignment of consultants to organize the cleanup of affected properties and payment for cleanup work.
5) Review and approval of infrastructure replacement requests and third-party claims.

The FA Program funds pay for the costs of cleanups that meet the more strict of the substantive requirements of the Model Toxic Controls Act (MTCA), Chapter 70A.305 RCW and Chapter 173-340 WAC, or the applicable federal or tribal requirements.

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II. Enrollment in the Financial Assurance Program

1. Eligibility

To be eligible for the FA Program:

1. The petroleum UST must be in Washington State.

2. The UST must be registered with the Washington State Department of Ecology (Ecology) or federal equivalent and meet the requirements of state and federal laws regulating petroleum USTs. Temporarily closed USTs are eligible if the owner or operator can show they were meeting all applicable UST regulations before closure.

    a. Enrollment is per UST. If a facility has more than one UST and seeks coverage for all, then each UST must be enrolled, and the applicable enrollment fee applies to each tank.

    b. For a facility with manifold tank system, each main and auxiliary tank must be enrolled individually, and the applicable enrollment fee applies to each tank.

3. The UST owner or operator must agree to clean up any future petroleum leak to MTCA or applicable federal or tribal standards, whichever is stricter. PLIA may require enrollment of the project in PLIA's Technical Assistance Program (TAP) as part of the cleanup.

4. For USTs with an existing petroleum leak before enrollment:

    a. If cleanup has been completed, the applicant must give PLIA a written decision from a regulatory authority saying the cleanup standards have been met.

    b. If cleanup actions have been completed, but without a written decision from the regulatory authority:

        i. The applicant must provide proof that the leak was reported to Ecology or the Environmental Protection Agency (EPA) and give all documentation about the cleanup actions taken.

        ii. The applicant must enroll in PLIA's Technical Assistance Program (TAP). The applicant must withdraw from Ecology's Voluntary Cleanup Program (VCP) or a federal equivalent if they are enrolled in that program. If the cleanup is under an order, you must provide a copy of this to PLIA.

iii. The applicant must agree to continue cleanup actions if necessary. The UST must enroll in TAP and submit a cleanup plan with milestones. Cleanup plans must be approved by PLIA.

c. If cleanup actions have been planned but not completed:

i. The applicant must provide proof that the leak was reported to Ecology or the Environmental Protection Agency (EPA) and give all documentation about the cleanup actions taken.

ii. The applicant must enroll in PLIA's TAP. The applicant must withdraw from Ecology's VCP or a federal equivalent if they are enrolled in that program.

iii. The applicant will give PLIA a draft action plan to clean up the site to MTCA or fitting federal or tribal standards, whichever is stricter. The applicant must agree to follow the cleanup schedule with approved milestones once PLIA approves the plan.

d. If a UST is under a MTCA enforcement order, agreed order, or consent decree, and cleanup is not complete, the applicant must submit the cleanup plan for review by PLIA and follow the cleanup action schedule, with milestones.

2. Application process

Applications for the FA program are submitted through the Agency's Online Community web portal. Using the Online Community requires a Secure Access Washington (SAW) account.

Any information entered in the application or sent to PLIA is subject to public disclosure. **Do not submit any information or supporting documentation that contains personally identifiable information, such as a Social Security number, taxpayer identification number, driver license number, or date of birth.** We strongly advise that you blackout or remove personal identifiers.

Alternative application forms are available on request for applicants who are unable to access the online application or who require language translations. Please contact PLIA by email at pliamail@plia.wa.gov or call 1-800-822-3905 to request a different format or translation of the application.

An enrollment application must include the following:

Applicant Information:

- Underground storage tank (UST) property owner or owners' contact information (if different than the applicant).
- UST operator or operators' contact information (if different than the applicant).
- Any leases or rental agreements for the UST property.

UST Facility Information:

- Identifying information for the UST facility, including Washington State Unified Business Identifier (UBI) number and tax parcel number or the federal/tribal equivalent.
- Date the business at the facility began operation.
- Fuel sources located at the facility.
- Information regarding known leaks at the facility, including:
    - Information regarding any parties involved or responsible.
    - Documentation regarding cleanup actions performed to date (if applicable).

UST Information:

For all USTs located on the facility property, PLIA will ask you for:

- A copy of the most recent compliance status inspection report from Ecology or the federal/tribal equivalent.
- A copy of the most recent compliance leak detection testing records for each UST at your facility (if available).
- Ecology tag number or the federal/tribal equivalent.
- UST characteristics of each UST at the facility (age, size, piping, etc.).
- Type of surface above and surrounding USTs at the facility.

Financial Information:

- Current method of financial responsibility for USTs at your facility.
- Proof of any means of financial responsibility mechanisms and details on claims made on those policies (if applicable), as well as proof of any other means of financial responsibility.
- Information on any pending litigation at the facility.

Inspection Safety Plan Information:

- A list of any safety concerns that PLIA staff who visit the facility may encounter (if applicable).
- Emergency information, including location and contact information for police, fire department, and local hospital.

See Appendix A for additional information and financial documentation.

3. Application Review

PLIA will review applications for completeness. PLIA staff will contact the applicant if additional information or documentation is necessary. PLIA will provide an Enrollment Agreement once PLIA determines that the applicant's UST is eligible for the program.

The Agency will provide an explanation for USTs PLIA decides are not eligible. Where appropriate, PLIA will list the requirements to become eligible. A UST owner or operator can re-apply for enrollment once they meet those requirements.

The Enrollment Agreement outlines the terms and conditions of enrollment, the coverage provided in the case of a petroleum leak, and any requirements specific to the UST facility. The enrolling owner or operator will sign the agreement and submit it to PLIA, along with an enrollment fee payment. If the enrolling owner or operator needs a payment plan, that must be signed, and the first installment paid to PLIA at that time. FA Program coverage will begin on the date PLIA receives payment and signs the agreement.

Please note: Any misrepresentations, material omissions or fraud during the application process or during program enrollment may disqualify owners or operators from the FA Program. If an owner or operator has committed fraud, all affected USTs will be

removed from the program and coverage terminated.

4. FA Program Enrollment Fee

Participating owners and operators must pay an annual enrollment fee for each enrolled UST. The enrollment fees assist with the costs of running the FA Program.

2024-2025 UST Enrollment Fee, Per UST	
UST Age	**Annual Enrollment Fee**
0-10 Years	$1,000
11-20 Years	$1,500
21-30 Years	$2,000
30+ Years	$2,500

The fee amounts are also posted on PLIA's website. PLIA will assess the enrollment fees at least every four years. PLIA may adjust this fee as needed for running the program but will provide notice before the Agency makes any updates.

The enrollment fee or initial payment under a payment plan is due when the enrolling UST owner or operator signs the Enrollment Agreement. Payment plans can be requested by contacting PLIA's Finance Unit by calling 1-800-822-3905 or by emailing Finance@plia.wa.gov.

Installment payments must be made within 60 calendar days of a payment date within the payment plan. Not doing so may result in the cancellation of the UST's enrollment in the FA Program. Any enrolled UST removed for non-payment of the enrollment fee may re-apply for a new period of FA coverage if they pay any past due fees in full.

The full amount of a payment plan must be paid, even if the enrolled UST leaves the FA Program before the enrollment period ends, either voluntarily or through removal by the Agency.

PLIA prefers payments to be made Online. However, during the initial start of the Program, payments must be made via check or money order. Cash is not accepted. Checks or money orders must be made out to PLIA

and mailed to:

Washington State Pollution Liability Insurance Agency
PO Box 40930
Olympia, WA 98504-0930

For any mailed payment, please reference the FA Program enrollment application number for the enrolled USTs so PLIA knows where to apply the payment.

5. Renewals

PLIA will send out renewal notices 60 days before the renewal date. The renewal notice will include a new Enrollment Agreement for signature. There will be no coverage lapse if PLIA receives the signed Enrollment Agreement and enrollment fee payment or installment payment prior to the end of the previous enrollment period.

As with the initial enrollment, program participants can pay the entire enrollment fee or enter into a payment plan when renewing the Enrollment Agreement.

6. Enrollment Fee Discounts.

PLIA is currently developing a list of approved discounts. These discounts offset the enrollment fee amounts by promoting best practices to reduce the likelihood or severity of an accidental petroleum leak. Additional information will be made available on PLIA's website.

Discounts will not be available during the first year of a UST's enrollment in the FA Program and will be applied starting in the second year. In your renewal notice, you will receive a list of the discounts you earned during the previous years. PLIA will not apply discounts to previous yearly fees.

PLIA will review information you submit, data from Ecology inspections, and information collected from PLIA assessments to determine if program Participants are eligible for further discounts. Participants may lose discounts if their facility is out of compliance or if they fail to submit required documentation.

**

III. UST Facility Assessments

1. Assessment purpose

PLIA will conduct assessments of enrolled UST facilities to assist participants to lower their risks of a leak and promote best practices. PLIA will choose facilities at random to assess. PLIA will give written notice one week before a scheduled assessment.

PLIA is not a regulatory agency for the UST Regulations, Chapter 173-360A WAC , and these assessments are not intended to replace or duplicate inspections conducted by the Department of Ecology, which determine whether USTs are being maintained in compliance with the laws and regulations that govern UST facilities.

When conducting a facility assessment, PLIA staff may:

- Verify requirements for enrollment in the FA Program.
- Decide the Participant's eligibility for fee discounts.
- Advise UST owners and operators on ways to reduce the risk of accidental petroleum leaks.

Owners and operators of enrolled USTs may volunteer to receive a facility assessment. PLIA encourages volunteering for an assessment but does not guarantee that an assessment will take place within a certain timeframe.

2. Preparing for a UST Facility Assessment

An owner or operator of the facility being assessed, the Participant, or their designated representative must be present for the assessment to:

- Provide full access to the facility.
- Answer questions about the system and its operating and maintenance processes.
- Provide PLIA with access to all records and alarm data.

Any representative must have the authority to make corrections. The facility must have a physically able and qualified staff person available to open and operate equipment.

**

IV. Financial Assurance Coverage

1. Financial assurance coverage amounts

The amount of FA Program coverage depends on when the leak occurred.

- A UST that experiences a release of petroleum *after* enrollment in the FA Program is eligible for up to $2 million, per facility, to pay for cleanup and necessary infrastructure costs related to dealing with the leak. The $2 million covers cleanup of affected properties, as well as third-party claims for bodily injury and property damage.

- A release from an UST that occurred *before* enrollment is available for up to $1 million, per facility, to pay for cleanup costs of affected properties. PLIA may seek to recover these funds from any liable party. Pre-enrollment leaks do not qualify for 3rd party damage claims or infrastructure spending.

The Participant has the responsibility to prove to PLIA the timing of when the leak occurred.

2. Prioritization of coverage

PLIA may prioritize program funding for investigations and cleanup actions to deal with either an emergency which threatens human health or the environment, or a leak that threatens an overburdened community or vulnerable population.

In addition, cleanup costs for properties affected by the leak will receive priority over costs for 3rd party bodily injury or property damage.

3. Allowable costs

Costs covered for an enrolled UST in the FA Program include but aren't limited to:

Eligible costs.

a. Cleanup actions approved by PLIA and done by a Prime Consultant, or another consultant approved by PLIA. Cleanup actions may include treatment, removal and proper disposal of any soil or water contaminated by the accidental leak; proper disposal of nonrepairable tanks or systems; and testing, monitoring, or other assessments.

b. Cleanup costs incurred by state or federal agencies responding to a leak from an enrolled UST.

c. For leaks that occur after registration, 3rd party claims for bodily injury and property damage.

d. For leaks that occur after registration, necessary infrastructure replacement costs related to cleanup of the leak. This may include: 1) gas station canopies, 2) replacement costs for a new petroleum UST that meets the current standards for such tank systems, and 3) certain equipment related to the operation of the affected tank system, including the fuel dispenser and pipe system.

e. Replacement of some surface features, including surface asphalt and concrete, curbs or lanes, and stormwater drainage. Damaged features will be replaced with the same or similar material that was present before the leak. An owner or operator of the leaking UST will be responsible for the cost difference if they want to upgrade their materials used. PLIA will patch up drilling holes using material present prior to the release.

Ineligible costs include but aren't limited to:

a. Costs related to a leak or damage that is discovered to have been intentionally caused by an owner, operator or consultant.

b. Penalties or fines given by tribal, state, or federal agencies.

c. Third-party cost recovery lawsuits under the Model Toxics Control Act (MTCA), RCW 70A.305.040 or the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

d. Replacement or reinstallation of electric vehicle chargers or any other equipment unrelated to the cleanup of the leaking UST.

e. Cleanup actions that exceed cleanup levels required by MTCA, tribal or federal standards.

f. Lost business income.

g. Replacement of buildings.

h. Cleanup of contamination from other sources – e.g., dry-cleaning fluids or other toxic non-petroleum substances - unless the Agency determines that it is necessary to complete cleanup of a leak from an enrolled petroleum UST.

i. All legal costs.

Reimbursement:

In limited circumstances, PLIA may allow Participants to pay for cleanup or items directly and the Agency will provide reimbursement. PLIA must pre-approve all costs before the Participant makes a payment to allow for reimbursement. In those situations, the Participant will need to establish a Statewide Vendor ID Number to receive payment from PLIA. Instructions on how to establish a Statewide Vendor ID number can be found at ofm.wa.gov.

Please contact PLIA at finance@plia.wa.gov if you have any questions.

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V. Filing for Funding Coverage

1. Reporting suspected leaks

Participants must report suspected or known leaks to the Department of Ecology and also notify PLIA. Participants can report leaks on Ecology's Statewide Environmental Reports Tracking System (ERTS) webpage. Additionally, Participants must also notify PLIA about any system alarms.

Participants need to immediately report leaks likely to have an impact on drinking water to the National Response Center at 1-800-424-8802 and to the Washington Emergency Management Division at 1-800-258-5990. The Participant must immediately report the leak to the EPA at (206) 553-6708 if a Participant's UST is regulated at the federal level. For more information, see Ecology's Spills website or the EPA's website.

Reporting a leak to PLIA does not meet Washington State or federal petroleum UST leak reporting requirements. UST owners and operators must report leaks to the appropriate authority within 24 hours of discovery.

2. Filing a financial assurance request

Participants must file a Financial Assurance Request (FAR) form to obtain funding to clean up a petroleum leak from an enrolled UST. 3rd party claimants also file FARs if they are seeking payment for property damage or bodily injury caused by a leak from an enrolled UST.

Participants can file an FAR through PLIA's website. If an alternative method is needed, please contact PLIA at either plia@plia.wa.gov or 1-800-822-3905.

Leaks that Participants report to the Department of Ecology through ERTS have a record created and are given a tracking number. Participants must provide the tracking number to PLIA as part of the FAR, along with any additional identifying information provided by Ecology or other regulating agency, such as the EPA.

In addition to any identifying numbers, Participants filing an FAR must include all information regarding the existence, cause, and timing of the leak.

3. Required Environmental and Archaeological Reviews

Before PLIA can approve an FAR, the following must be completed:

a. State Environmental Policy Act (SEPA) Review

The State Environmental Policy Act (SEPA) process identifies and analyzes environmental impacts of governmental decisions, in order to determine if other actions are necessary to avoid, reduce, or compensate for negative environmental impacts.

The Agency will provide a SEPA checklist for the Participant to complete within 30 calendar days. PLIA reviews the checklist and issues an opinion on the environmental significance of the project before it can begin. The SEPA review process requires a 14-day public comment period after PLIA has completed its review and posted its decision on the Department of Ecology's SEPA Register.

b. Department of Archaeological and Historical Preservation (DAHP) Consultation

Washington Executive Order 21-02 requires state agencies to consult with DAHP and affected tribal nations on the potential impacts on cultural resources from projects proposed in state-funded construction or purchase. Prior to FAR approval, PLIA will provide the necessary information to DAHP for review. This review takes 30 calendar days. Potentially affected tribal nations will be notified of the project to provide input.

An Inadvertent Discovery Plan (IDP) must be completed for the project before any physical work is completed. DAHP requires this plan and outlines the expectations of what should occur if historically significant artifacts are located. The Prime Consultant and PLIA will complete the IDP. PLIA may require up to 14 days to draft the IDP.

4. Review of the FAR

PLIA will review the information provided to assess the timing of the leak and then decide if the leak qualifies for FA Program coverage of up to $1 million or $2 million. Participants will have to prove that the leak occurred *after* enrollment in the FA Program if they disagree with PLIA's coverage decision.

Once PLIA approves an FAR, the Agency will assign a member of its technical staff as a site manager to oversee the cleanup activities, as well as a PLIA-contracted Prime Consultant to conduct and manage the cleanup.

5. The Cleanup Process

Once PLIA approves an FAR, the FA Participant must enroll in PLIA's Technical Assistance Program (TAP). A portion of the funds from an approved FAR will pay for the TAP enrollment fee. PLIA's technical staff will provide the actions needed to meet regulatory requirements and provide the Participant with a review of the cleanup progress.

A PLIA-assigned Prime Consultant will perform the cleanup process following either the state's cleanup requirements outlined in Chapter 173-340 WAC, MTCA or applicable tribal or federal requirements, whichever has stricter standards. PLIA will approve the steps and estimated costs and the Participant will approve all cleanup actions before the work begins.

The cleanup process includes the following steps:

1. Remedial investigation – Assessment and data collection from the area to determine the extent of contamination in soil, groundwater, air, surface water, or sediment.

2. Feasibility study – A technical and financial evaluation of potential cleanup options to determine the most effective and environmentally useful cleanup remedy.

3. Interim actions – Done where applicable, these are cleanup actions to address the leak that need to occur before the Cleanup Action Plan is completed. This may include actions to secure a facility, like placement of fencing.

4. Cleanup action plan – A workplan outlining the steps to perform the selected cleanup option. The plan will include a required schedule (reflected in the milestones).

5. Implementation, reporting and evaluation – Performance of the cleanup action plan, including the collection of data to determine if the cleanup option was successful.

The Prime Consultant or other approved consultant will consult with the program Participant to create a workplan. The Participant must approve the workplan. After that, the Prime Consultant or other approved

consultant submits a statement of work to PLIA for approval. All costs must be pre-approved by PLIA in writing unless otherwise specified. The Prime Consultant will submit all invoices for payment.

6. Access to site during the cleanup process

Participants who have entered the cleanup process, as well as owners of other properties affected by a leak, must grant property access to PLIA and the assigned Prime Consultant in order to receive cleanup funding. Cleanup will not occur on properties where owners refuse access. PLIA will complete the cleanup process as much as possible on the properties where owners have granted access. Once PLIA has issued a letter confirming that cleanup is complete, called a No Further Action letter, then Program funds to address the release will no longer be available.

7. Infrastructure replacement

Funds for the replacement of certain infrastructure damaged or removed during the cleanup process are available. Participants in the FA Program will work with their project manager to: 1) identify what infrastructure spending is available, 2) obtain pre-approval for all proposed purchases and installations, and 3) to hire the necessary contractors for the work. PLIA must pre-approve all spending on infrastructure repair or replacement.

Projects receiving funding for cleanup of a pre-enrollment release **are not eligible** to use those funds for infrastructure replacement. PLIA encourages UST owners and operators to review PLIA's Loan and Grant Program for assistance with infrastructure upgrades or replacement.

8. Completing the cleanup process

Once cleanup actions are complete, the Prime Consultant will inform PLIA and submit a technical report. PLIA will review the information submitted and decide if the cleanup meets the substantive requirements of MTCA or applicable tribal or federal standards. The Agency will issue a No Further Action letter if PLIA determines that the site has met those standards, which will close the process. Once an FAR is closed, no further claims for funds can be made for that release.

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VI. Program Violations and Cancellation of Enrollment

1. Violations

PLIA will review any potential violations of the FA Program's requirements. If PLIA discovers a violation, the Agency will send a notice of violation to the Participant informing them of the violation and what they need to do to fix the issue.

In most cases, Participants will have 60 days to correct the problem. The Participant must also fix other violations found after issuing the notice within the 60-day time frame of the initial violation. PLIA will cancel the enrollment of the affected UST if the Participant fails to correct problems within 60 days following the initial notice of violation.

2. Types of Violations

A violation is a failure to comply with the Enrollment Agreement or FA Program requirements.

Violations include:

- Failure to follow the Enrollment Agreement terms and conditions.
- Failure to maintain the UST or facility to a standard established in the Enrollment Agreement.
- Refusal to allow the Agency access to an enrolled UST or to conduct a facility assessment.
- Failure to notify the Agency of a leak from the enrolled UST.
- Failure to notify the Agency of any notice of noncompliance or any notice of violation issued by a regulatory agency.
- Failure to pay the enrollment fee in full.
- Failure to comply with PLIA instructions during a cleanup.
- Failure to meet cleanup milestones.
- Refusal to allow PLIA or its consultants to conduct cleanup actions.
- Failure to comply with cleanup plans agreed to with a federal or state agency.
- Fraud by an owner or operator.

PLIA encourages Participants to work closely with FA Program staff to adjust milestones and ensure enrollment conditions are met if external or unavoidable circumstances occur.

3. Cancellation process

PLIA may determine that cancellation of enrollment in the FA Program is appropriate if Participants do not fix violations of the FA Program's requirements. PLIA will then provide a written notice of cancellation, specifying the reasons for the cancellation.

Cancellation can occur at any time during coverage. Program coverage will continue for 60 days following written notice of cancellation. PLIA will send notices of cancellation by certified mail and email to the addresses listed on the Participant's application.

PLIA will continue to fund ongoing cleanup or on-going third-party property cleanup resulting from a leak if PLIA cancels a UST's enrollment in the FA Program after an FAR has been filed for that release.

If the Participant disputes a cancellation, they may request a review of the decision. FA coverage for the UST will continue during the review process. If PLIA upholds the cancellation, then FA coverage ends on the date of the written notice of the denial or 60 days from the original notice of cancellation, whichever is later. Once a cancellation has taken effect, coverage will cease, even if the Participant formally appeals PLIA's final decision.

4. Cancellation by owner or operator of the enrolled UST

A Participant may request not to renew their coverage at any time. However, PLIA will not offer refunds on the fee and coverage will continue for the full 12-month enrollment period. If a Participant has a payment plan, they must continue to make installment payments until they have paid the full enrollment fee.

Participants may still submit an FAR for a leak that occurs during any point of the remaining enrollment period.

5. Cancellation due to transfer of ownership

Coverage by the FA Program will end on the date of transfer if a Participant sells or transfers ownership of an enrolled UST. The prospective owner should apply for FA Program enrollment before the transfer is completed in order to prevent a gap in coverage.

When there is an ownership transfer, the Participant must pay the enrollment fee in full prior to the transfer, regardless of whether the incoming owner enrolls in the FA Program. The new owner will pay a yearly enrollment fee for coverage starting on the date of the transfer if they are approved to enroll in the FA Program.

6. Re-enrollment following cancellation

The owner or operator of a disenrolled UST may reapply for coverage as soon as they resolve the issue that caused cancellation, except in cases of fraud. Participants will lose any earned discounts which will not be available until the second year of coverage after reapplying.

If PLIA cancels a UST's enrollment due to fraud, the Agency will not allow the UST owner or operator to re-enroll the affected UST or to enroll any other USTs. PLIA will allow other tanks owned or operated by the same party to remain in the FA Program if they are not associated with the fraudulent activity.

Any leak that occurs during a lapse in FA Program coverage will only be eligible for pre-enrollment coverage (up to $1 million) if the UST later re-enrolls in the program. This coverage will be subject to cost recovery by the Agency.

7. Overlapping coverage

The FA Program will provide only secondary coverage if a Participant gets coverage for an enrolled UST through a different source of financial responsibility. The new source of financial responsibility will be the first source of funds. PLIA will only pay FA Program funds after the Participant has depleted their primary source of funds.

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VII. Third-Party Claims

3rd parties can make a request for payment from the Financial Assurance program for a post-enrollment leak. PLIA provides third-party coverage for bodily injury or property damage resulting from a leak of petroleum from an enrolled UST.

3rd-party claims are not necessary to get cleanup funding. The cleanup of neighboring properties will be cleaned up as part of the UST cleanup if a petroleum leak from an enrolled UST spread to a property outside of the facility (e.g., the neighboring property) and contamination is above a cleanup standard. This will not require filing a 3rd party claim. The neighboring property owner will be contacted to sign an access agreement and to schedule necessary cleanup actions (e.g., sampling as part of investigation, or cleanup work).

Because 3rd-party claims are only available for leaks that occur after a UST is enrolled in the Program, the Participant or third party have the responsibility to prove that a leak occurred after enrollment of the UST.

PLIA will provide 3rd party coverage for bodily injury and for property damage once the Agency has fully funded and completed the cleanup of all properties affected by a petroleum release. Funding for third-party claims may not be available if the cost of cleanup is over the funds available for the project.

The owner or operator must first settle or complete 3rd party legal claims before they are eligible for third-party funding for bodily injury or property damage.

For property damage claims, the claimant 3rd party must allow PLIA or its representative to access the property where the damage occurred. Failure to do so will make the claim ineligible for funds.

Third parties must submit a third-party FAR to PLIA prior to completion of the Site cleanup and the delivery of a No Further Action letter from PLIA's Technical Assistance Program for the release.

The third party must agree to Washington State conducting an audit of any claim paid out under the Program. Third-party claimants must maintain records for at least three years following payment on the claim and provide copies when requested. 3rd party claimants must maintain records until the end of a state audit if the audit goes past the three-year mark.

The following groups are not eligible to make a 3rd party claim:

- Owners or operators of USTs where the leak occurred.
- Owners of the facility or property where the leak originated.
- A person who received property in anticipation of damages due to a leak.
- Employees, agents, or family of the owner or operator of the UST where the leak occurred, or employees or agents of the owner of the property on which the UST is located.

The Third-Party Claims Form can be found on PLIA's website. Please contact PLIA if you have any questions.

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IX. Agency-led Cleanup for Non-Enrolled UST

Properties with a leak from a non-enrolled UST may be eligible for up to $1 million of funding for an Agency-led cleanup. As with funding for the cleanup of pre-enrollment releases, PLIA will seek to recover the costs of the cleanup process from the parties who are legally responsible for the contamination.

The property must meet two conditions to qualify for Agency-led remediation:

- The leak has been reported to the appropriate state or federal agency.
- The leak occurred in an area where there is either a risk that drinking water has been impacted or where cleanup of the leak is necessary in order to equitably protect human health and the environment in communities that have been marginalized, overburdened, and underserved.

The owner or operator of the UST or the owner of a property affected by the leak must give consent for PLIA and the Prime Consultants to:

- Develop and implement a cleanup plan.
- Access the property to conduct cleanup actions.
- Recover the costs of the cleanup actions from the UST owner or operator, the property owner, or any other potentially liable parties.
- File a lien on the property being cleaned.

A person seeking cleanup of a release from a non-enrolled UST will file an Agency-led Remediation Request Form, available on PLIA's website. A person filing a request for an Agency-led cleanup must provide all information known about the leak, including the identity of any people or companies potentially responsible for the cleanup costs.

The Agency's director will make the final decision regarding approval for an Agency-led cleanup of a leak from a non-enrolled UST. Once the director has made a decision, PLIA will send a letter to the applicant with an explanation of the reasons for approval or denial. Approval of a release for Agency-led cleanup is dependent on the availability of funding and Agency resources.

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X. Cost Recovery

PLIA may seek repayment of funding if PLIA funds the cost of cleanup for a petroleum leak that occurred before a UST's enrollment in the FA Program or through an Agency-led cleanup of a leak from a non-enrolled UST. Cost recovery may be sought by PLIA from any party liable under the Model Toxics Control Act, including but not limited to the current owner/operator of the Petroleum Underground Storage Tank.

PLIA reserves the right to recover the costs associated with any cleanup actions through the use of cost recovery options in the Model Toxic Control Act - RCW 70A.305.080, RCW 70A.545.060, RCW 70A.545.070, and any other applicable federal and state laws.

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XI. Overpayments, Return of Funds, and Fraud

1. Overpayments made during the cleanup process

The Agency will request the return of funding in writing if PLIA discovers an overpayment or mistaken payment was made during the cleanup process. PLIA expects to have the return payment received within 30 calendar days after written notice.

PLIA may make requests for the return of funds for several different causes, which include:

- Administrative errors.
- The discovery that the Participant already received funds from another source to cover the same expense.
- Unintended omissions or misrepresentations of important information during the filing of a Financial Assurance Request or an invoice during the cleanup process.

PLIA may pursue additional recovery methods if return payment is not received after the written notice, such as:

- Pursuing debt collection.
- Filing a lien on the property where the UST is located.
- Requesting that the Attorney General's Office bring a civil lawsuit to recover the overpaid amount as well as PLIA's administrative and legal costs.

Failure to return an overpayment may also result in removal from the FA Program.

2. Fraud

PLIA will order the return of the payments if: a) any person intentionally deceives the Agency, b) knowingly submits incorrect information in order to receive funds from the FA Program, or c) knowingly fails to complete work for which PLIA has already provided funding. PLIA will also prohibit the responsible person or company from further participation in the FA Program and may refer the matter to law enforcement.

Participants must make an ordered repayment within 7 calendar days of a fraud notification. If not, PLIA may file a lien on the property on which an enrolled UST is located. PLIA may also request the Attorney General's

Office to file a civil suit to recover the funds, impose a penalty, and reimburse the Agency's legal and administrative costs in the recovery of the funds.

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XII. Review of Agency Decisions

1. Reconsideration of initial Agency decisions

Several types of initial decisions by PLIA staff may be reviewed within the Agency if requested by the affected party, including:

- A denial of eligibility for the FA Program or rejection of an application for enrollment.
- Cancellation of enrollment in the FA Program or the denial of renewal.
- A denial of eligibility for payment from the Program.
- The amount of payment authorized by PLIA.
- Requests for cost repayment.

Participants must make a request for review, in writing, within 45 calendar days of notice of the decision, as stated in WAC 374-10-140. Participants seeking review of an initial decision must provide any information and supporting documentation explaining the circumstances of the violations and why they were not able to appropriately address them. Participants should send requests to the attention of PLIA's Legislative and Policy Manager, either by email to pliamail@plia.wa.gov or regular mail to:

Legislative and Policy Manager
Pollution Liability Insurance Agency
PO Box 40930
Olympia, WA 98504-0930

Once PLIA receives a request for review, the Legislative and Policy Manager will assess each request by evaluating the Agency decision under the rules of the FA Program and will issue a final written decision within 30 days. This will be the final Agency decision on the matter. Participants must make further appeals through a request for a legal hearing. A UST's coverage under the Program will continue during this review process.

If a Participant disagrees with the Legislative and Policy Manager's decision, then the Participant may seek a formal hearing with the Office of Administrative Hearings. Participants have 60 days to submit a written request to PLIA's Executive Director for a hearing to be held as allowed

under the Washington Administrative Procedure Act Chapter 34.05 RCW, Part IV.

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XIII. Applicable State Laws and Regulations

- Archaeological Sites and Resources: Chapter 27.53 RCW
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA): 42 U.S.C. § 9601
- Governors Executive Order 21-02: Executive Order 21-02
- Petroleum Underground Storage Tanks – Financial Assurance Program: Chapter 70A.345 RCW
- State Financial Assurance Program: Chapter 374-10 WAC
- Model Toxics Control Act (MTCA): Chapter 70A.305 RCW
- Model Toxic Control Act Cleanup Regulations: Chapter 173-340 WAC
- Prevailing Wages on Public Works: Chapter 39.12 RCW
- State Environmental Policy: Chapter 43.21C RCW
- State Environmental Policy Act Rules: Chapter 197-11 WAC
- Underground Storage Tank Regulations: Chapter 173-360A WAC
- Administrative Procedure Act: WAC 34.05, Part IV

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Appendix A - Application Information

Applicant Information	• Name • Mailing address • Primary phone number • Secondary phone number • Email address

Business Information	• Business name
	• Business owner (if different from applicant)
	• Mailing address
	• Physical address (if different from mailing address)
	• Tax parcel number(s)
	• Primary phone
	• Secondary phone
	• Email address
	• Length of time business has been in operation
	• If the business is part of a trust:
	  ○ Name of trustee
	  ○ Name of trust
	  ○ Name of beneficiary
	  ○ Amount of ownership in trust (%)
	• Is petroleum still being sold at the business? If so, provide date of last sale.
	• Any contracts, including leases on the USTs

Application Documents	• Business financial statement for current year (CPA statement, profit and loss statement, or balance sheet)
	• Business license
	• Certificate of ownership
	• Detailed property/business map depicting:
	  ○ Tanks
	  ○ Fill ports
	  ○ Utility lines
	  ○ Islands
	  ○ Dispensers
	• Electric vehicle (EV) charging station information

UST Information	• UST identification information • A copy of the tank license

	• Ecology tag number
	• Capacity
	• Tank age
	• Fuel type
	• Type of surface above UST
	• Surrounding material
	• Tank composition
	  ○ Double or single walled
	  ○ Material
	  ○ Is there corrosion protection
	• All information on pumps and piping
	  ○ Number of suction pumps
	  ○ Number of turbine pumps
	  ○ Type of piping
	  ▪ Single or double walled
	  ▪ Is corrosion protection present
	  ○ Number of dispenser pumps
	  ○ Is there a secondary containment for dispensers present
	  ▪ For each dispenser or grouped together
	  ○ Any other current UST system information (existence of a canopy, number of dispenser islands, etc.)
	• Three-year UST inspection history, or the most recent inspection report if one has not been conducted in the past three years
	• Three years of UST maintenance and operation logs

Known Releases	• Date release identified. • ERTS number or other proof the release was reported to the appropriate agency. • Whether the UST is enrolled in Department of Ecology's Voluntary Clean-up Program or another equivalent program. • If the site is part of an Agreed Order or Consent decree provide a copy. • Technical reports of any site investigation or cleanup work that has been completed. • Information on impacts to groundwater or surface water.

Financial Responsibility Information	• Current financial responsibility mechanism.
	• Has an insurance claim been filed for this UST?
	  ○ Has a claim been denied?
	  ○ Did the total remediation costs exceed the policy limit?
	• Has the applicant or site ever been denied an insurance policy? If so, please provide all available information.
	• Is the UST or physical site where it is located involved in any litigation? If so, please provide all available information.

Assessment Safety Plan information	• List any physical hazards present at the site (uneven, unstable surfaces)
	• List any Access hazards
	• Is there traffic on or near the site
	• Provide name, address, local phone number of:
	  ○ Hospital
	  ○ Police department (911 is not the local number)
	  ○ Fire department (911 is not the local number)