

Leaking Underground Storage Tank Workgroup

Overview of Proposed Changes to WAC 173-340-450 for STAG Review

November 21, 2019

Background

Under [Chapter 90.76 RCW](#),ⁱ the Department of Ecology (Ecology) regulates and periodically inspects underground storage tank (UST) systems that store petroleum and other hazardous substances to prevent releases into the environment. The state program must meet [federal requirements](#)ⁱⁱ for state program approval and be consistent with and no less stringent than the federal program established by the U.S. Environmental Protection Agency under the Resource Conservation and Recovery Act.

The state regulates UST systems under Chapter [173-360A WAC](#)ⁱⁱⁱ. UST system owners and operators must investigate and clean up confirmed releases from regulated UST systems in accordance with the MTCA Cleanup Regulation, Chapter [173-340 WAC](#).^{iv} See WAC [173-360A-0750\(4\)](#).

UST system owners and operators must comply with the requirements in WAC [173-340-450](#) in addition to the other requirements in Chapter 173-340 WAC. Section 450 specifies initial response actions that UST system owners and operators must take to reduce and monitor the threats posed by the release and to characterize the nature and extent of contamination from the release. Ecology may enforce the requirements of Section 450 under both Chapter 90.76 RCW and Chapter 70.105D RCW.

The Pollution Liability Insurance Agency (PLIA) provides financial assistance to UST system owners and operators through its [Commercial UST Reinsurance Program](#)^v and its [UST Loan and Grant Program](#).^{vi} PLIA also provides technical assistance to persons who independently clean up UST releases under its [Petroleum Technical Assistance Program](#).^{vii}

Purpose of Changes

As part of this rulemaking, Ecology is not proposing changes to its overall strategy for getting releases from regulated UST systems cleaned up. However, Ecology is proposing several changes to help accelerate the investigation and cleanup of such releases. The changes are intended to:

- Streamline the existing rule.
- Update outdated parts of the rule.
- Clarify parts of the rule to improve compliance.
- Improve integration of the rule with Chapter 173-360A WAC.
- Update language to align with current rule writing practices.

Overview of Changes

Ecology is proposing the following changes to WAC 173-340-450:

- Clarify purpose and applicability of the section. The section applies only to owners and operators of regulated UST systems from which there has been a confirmed release. The section only specifies additional requirements for initially responding to releases from UST systems. The other requirements of the cleanup rule still apply.

- Eliminate overview of the steps in the process for investigating and cleaning up contaminated sites and the administrative options for conducting those remedial actions to eliminate any confusion and avoid duplication. Once the UST-specific requirements in Section 450 are completed, the cleanup process and administrative options are the same as for any other contaminated site.
- Add definitions for UST system, UST system owner, and UST system operator to clarify applicability of the requirements in this section. The terms will have the same meaning as in the UST rule.
- Clarify that if an UST system owner or operator fails to comply with the requirements in this section, then they are subject not only to enforcement under Chapter 70.105D RCW, but also enforcement under Chapter 90.76 RCW, including monetary penalties and orders.
- Clarify that all of the required actions specified in this section are interim actions, including the initial response actions required within the first 24 hours after release confirmation.
- Extend the deadline for completing the initial site characterization from 20 days to 30 days after release confirmation.
- Add requirement for investigating vapor intrusion pathways as part of the initial site characterization. Add definition for vapor intrusion.
- Change criteria for when groundwater must be tested as part of the initial site characterization to reflect current practice. A key new criteria is that groundwater must be tested unless a professional engineer or licensed hydrogeologist can demonstrate to Ecology's satisfaction that the release does not pose a threat to groundwater.
- Update and clarify sampling requirements for the initial site characterization.
- Add 60-day deadline for beginning free product recovery, along with a requirement for quarterly checking for free product and quarterly reporting of efforts to remove the free product. This is to emphasize that free product recovery needs to be an on-going effort.
- Combine reporting of all interim actions within 90 days of release confirmation. Eliminate verbal or written status report on initial response actions and site characterization that is currently required within 20 days of release confirmation.
- Clarify what must be reported as part of the interim action report.
- Add a requirement that the interim action report must be updated and submitted to Ecology every five years unless Ecology is supervising remedial action at the site under an order or decree or the UST system owner or operator has enrolled the site in either Ecology's or PLIA's technical assistance programs.

ⁱ <https://apps.leg.wa.gov/RCW/default.aspx?cite=90.76>

ⁱⁱ https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr281_main_02.tpl&SID=f79909339a75e79cc3bc59fa652b6011&m=06&d=01&y=2016&pd=20150101&pitd=20150101&submit=GO

ⁱⁱⁱ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-360A>

^{iv} <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340&full=true>

^v <https://plia.wa.gov/commercial-ust-reinsurance-program/>

^{vi} <https://plia.wa.gov/ust-loan-and-grant-program/>

^{vii} <https://plia.wa.gov/ptap/>