

WAC 173-360A-1005 Definition of terms. For the purposes of this part, the following definitions apply unless the context clearly indicates otherwise.

(1) "**Accidental release**" means any sudden or nonsudden release of regulated substances arising from operating an underground storage tank that results in a need for remedial action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

(2) "**Bodily injury**" has the meaning given to this term by applicable state law; however, this term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(3) "**Chief financial officer**," in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

(4) "**Controlling interest**" means direct ownership of at least (~~(fifty)~~) 50 percent of the voting stock of another entity.

(5) "**Financial reporting year**" means the latest consecutive (~~(twelve)~~) 12-month period for which any of the following reports used to support a financial test is prepared: (a) A 10-K report submitted to the U.S. Securities and Exchange Commission; (b) an annual report of tangible net worth submitted to Dun and Bradstreet; or (c) annual reports submitted to the Energy Information Administration or the Rural Utilities Service. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

(6) "**Legal defense cost**" means any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

(a) By the U.S. Environmental Protection Agency or a state to require remedial action or to recover the costs of remedial action;

(b) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(c) By any person to enforce the terms of a financial assurance mechanism.

(7) "**Local government**" has the meaning given to this term by applicable state law and includes Indian tribes. The term is generally intended to include:

(a) Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and

(b) Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

(8) "**Occurrence**" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank. This definition is intended to assist in the understanding of this part and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insur-

ance usage or to prevent the use of other standard insurance terms in place of "occurrence."

(9) "**Owner or operator**," means, for the purposes of this part, when the owner or operator are separate parties, the party that is responsible for obtaining or has obtained financial assurances.

(10) "**Petroleum marketing facilities**" means all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(11) "**Property damage**" has the meaning given to this term by applicable state law. This term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage do not include remedial action associated with releases from underground storage tanks which are covered by the policy.

(12) "**Provider of financial assurance**" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in WAC 173-360A-1060 through 173-360A-1073, including a guarantor, insurer, risk retention group, surety, ~~(or)~~ issuer of a letter of credit, or a state.

(13) "**Substantial business relationship**" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(14) "**Substantial governmental relationship**" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an underground storage tank release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(15) "**Tangible net worth**" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

(16) "**Termination**" under WAC 173-360A-1082 and 173-360A-1083 means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

AMENDATORY SECTION (Amending WSR 18-15-083, filed 7/18/18, effective 10/1/18)

WAC 173-360A-1020 Allowable mechanisms and combinations of mechanisms. (1) **For all owners or operators.** Subject to the limitation of subsection (3) of this section, an owner or operator, including a lo-

cal government owner or operator, may use any one or combination of the mechanisms listed in WAC 173-360A-1060 through ~~((173-360A-1066))~~ 173-360A-1067 to demonstrate financial responsibility under this part for one or more underground storage tanks.

(2) **For only local governments owners or operators.** Subject to the limitation of subsection (3) of this section, a local government owner or operator may also use any one or combination of the mechanisms listed in WAC 173-360A-1070 through 173-360A-1073 to demonstrate financial responsibility under this part for one or more underground storage tanks.

(3) **Limitation on combining self-insurance and guarantee.** An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

AMENDATORY SECTION (Amending WSR 18-15-083, filed 7/18/18, effective 10/1/18)

WAC 173-360A-1030 Termination of mechanisms by providers. (1) **Authority.** Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(2) **Date of termination.**

(a) **Guarantee, surety bond, or letter of credit.** Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until ~~((one hundred twenty))~~ 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) **Insurance ~~((or))~~, risk retention group coverage, or state-funded assurance.** Termination of insurance or risk retention group coverage, except for nonpayment or misrepresentation by the insured, or state-funded assurance may not occur until ~~((sixty))~~ 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of ~~((ten))~~ 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(3) **Obtaining alternate coverage.**

(a) **If provider incapacitated.** If a provider of financial assurance cancels or fails to renew for reasons of incapacity of the provider, then the owner or operator must obtain alternate coverage as specified in WAC 173-360A-1035.

(b) **If provider not incapacitated.** If a provider of financial assurance cancels or fails to renew for reasons other than incapacity of the provider, then the owner or operator must obtain alternate coverage as specified in this section within ~~((sixty))~~ 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within ~~((sixty))~~ 60 days after receipt of the notice of termination, then by that date the owner or operator must notify the department of the failure and submit:

(i) The name and address of the provider of financial assurance;

- (ii) The effective date of termination; and
- (iii) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with WAC 173-360A-1040(2).

AMENDATORY SECTION (Amending WSR 18-15-083, filed 7/18/18, effective 10/1/18)

WAC 173-360A-1035 Responsibilities upon bankruptcy or other incapacity of owner or operator or provider of financial assurance. (1) Notifying department upon bankruptcy of owners or operators. Within ~~((ten))~~ 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the department by certified mail of such commencement and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).

(2) **Notifying owners or operators upon bankruptcy of guarantor.** Within ~~((ten))~~ 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in WAC 173-360A-1061.

(3) **Notifying department upon bankruptcy of local government owner or operator.** Within ~~((ten))~~ 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the department by certified mail of such commencement and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).

(4) **Notifying owners or operators upon bankruptcy of guarantor providing local government assurance.** Within ~~((ten))~~ 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in WAC 173-360A-1072.

(5) **Obtaining alternate financial assurance upon bankruptcy or incapacity of provider.** An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator must obtain alternate financial assurance as specified in this part within ~~((thirty))~~ 30 days after receiving notice of such an event. If the owner or operator fails to obtain alternate coverage within ~~((thirty))~~ 30 days after such notification, then by that date the owner or operator must notify the department of the failure and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).

(6) Obtaining alternate financial assurance upon incapacity of state fund or other state assurance. Within 30 days after receipt of

notification that a state fund or other state assurance has become incapable of paying for assured remedial action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

AMENDATORY SECTION (Amending WSR 18-15-083, filed 7/18/18, effective 10/1/18)

WAC 173-360A-1040 Recordkeeping by owners and operators. (1) **Requirement to maintain evidence.** Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this part for an underground storage tank until released from the requirements of this part under WAC 173-360A-1010. Owners or operators must make records readily available upon request by the department.

(2) **Types of evidence required.** An owner or operator must maintain the following types of evidence of financial responsibility:

(a) **Certification of financial responsibility.** An owner or operator using an assurance mechanism specified in WAC 173-360A-1060 through 173-360A-1073 must maintain an updated copy of a certification of financial responsibility worded as set forth in WAC 173-360A-1096, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

(b) **Assurance mechanism instrument.** An owner or operator using an assurance mechanism specified in WAC 173-360A-1060 through 173-360A-1065 or 173-360A-1070 through 173-360A-1073 must maintain a copy of the instrument worded as specified.

(c) An owner or operator using a financial test or guarantee must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than (~~one hundred twenty~~) 120 days after the close of the financial reporting year.

(d) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(e) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(f) An owner or operator covered by a state fund or other state assurance must maintain on file a copy of any evidence of coverage supplied by or required by the state under WAC 173-360A-1067.

(g) A local government owner or operator using the local government bond rating test under WAC 173-360A-1070 must maintain a copy of its bond rating published within the last (~~twelve~~) 12 months by Moody's or Standard & Poor's.

(~~(g)~~) (h) A local government owner or operator using the local government financial test under WAC 173-360A-1071 or the local government guarantee under WAC 173-360A-1072 supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent

completed financial reporting year. Such evidence must be on file no later than ~~((one hundred twenty))~~ 120 days after the close of the financial reporting year.

~~((h))~~ (i) A local government owner or operator using the local government guarantee under WAC 173-360A-1072 supported by the local government bond rating test under WAC 173-360A-1070 must maintain a copy of the guarantor's bond rating published within the last ~~((twelve))~~ 12 months by Moody's or Standard & Poor's.

~~((i))~~ (j) A local government owner or operator using the local government guarantee under WAC 173-360A-1072 (4)(a) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

~~((j))~~ (k) An owner or operator using a local government fund under WAC 173-360A-1073 must maintain the following documents:

(i) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund; and

(ii) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under WAC 173-360A-1073 (3)(c) using incremental funding backed by bonding authority, then the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

~~((k))~~ (l) An owner or operator using a local government fund established under WAC 173-360A-1073 (3)(c) using incremental funding backed by bonding authority must also maintain documentation of the required bonding authority, including either:

(i) The results of a voter referendum under WAC 173-360A-1073 (3)(c)(i); or

(ii) Attestation by the state attorney general as specified under WAC 173-360A-1073 (3)(c)(ii).

NEW SECTION

WAC 173-360A-1067 Mechanism—State fund or other state assurance. (1) **Applicability of mechanism.** An owner or operator may satisfy the requirements of WAC 173-360A-1015 by obtaining coverage from a state fund or other state assurance program.

(2) **Evidence of coverage.** The state must provide to each owner or operator for which it is assuming financial responsibility a letter or certificate describing the nature of the state's assumption of responsibility. The letter or certificate from the state must include, or have attached to it, the following information: The facility's name and address and the amount of funds for remedial action and/or for compensating third parties that is assured by the state. The owner or operator must maintain this letter or certificate on file as proof of financial responsibility in accordance with WAC 173-360A-1040 (2)(f).

WAC 173-360A-1082 Appendix C—Endorsement.

Name: [name of each covered location]
Address: [address of each covered location]
Policy Number:
Period of Coverage: [current policy period]
Policy Retroactive Date:
Name of [Insurer or Risk Retention Group]:
Address of [Insurer or Risk Retention Group]:
Name of Insured:
Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-0200, and the name and address of the facility.]

for [insert: "taking remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental release"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured does not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of remedial action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another

mechanism or combination of mechanisms as specified in WAC 173-360A-1060 through 173-360A-1065, 173-360A-1067, and 173-360A-1070 through 173-360A-1073.

c. Whenever requested by the Washington State Department of Ecology, the ["Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in WAC 173-360A-1082 and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of Authorized Representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

Endorsement Holder:

Business Licensing Service

P.O. Box 9034

Olympia, WA 98507-9034

AMENDATORY SECTION (Amending WSR 18-15-083, filed 7/18/18, effective 10/1/18)

WAC 173-360A-1083 Appendix D—Certificate of insurance.

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Endorsement (if applicable):

Period of Coverage: [current policy period]

Policy Retroactive Date:

Name of [Insurer or Risk Retention Group]:
Address of [Insurer or Risk Retention Group]:
Name of Insured:
Address of Insured:

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-0200, and the name and address of the facility.]

for [insert: "Taking remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured does not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of remedial action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in WAC 173-360A-1060 through 173-360A-1065, 173-360A-1067, and 173-360A-1070 through 173-360A-1073.

c. Whenever requested by the Washington State Department of Ecology, the ["Insurer" or "Group"] agrees to furnish the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in WAC 173-360A-1083 and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of Authorized Representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

Certificate Holder:

Business Licensing Service

P.O. Box 9034

Olympia, WA 98507-9034